Please note: These transcripts are not individually reviewed and approved for accuracy.

MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA JR., CalEPA BUILDING

1001 I STREET

BYRON SHER AUDITORIUM

SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 24, 2009 9:45 A.M.

JAMES F. PETERS, CSR, RPR CERTIFIED SHORTHAND REPORTER LICENSE NUMBER 10063

ii

APPEARANCES

BOARD MEMBERS

- Ms. Margo Reid Brown, Chairperson
- Ms. Sheila Kuehl
- Mr. John Laird
- Ms. Carole Migden
- Ms. Rosalie Mul

STAFF

- Mr. Mark Leary, Executive Director
- Ms. Rubia Packard, Chief Deputy Director
- Mr. Elliot Block, Chief Counsel
- Ms. Tracey Cottingim, Administrative Assistant
- Mr. Mitch Delmage, Manager, Local Assistance and Market Development Division, Bay Area Branch
- Ms. Tamar Dyson, Staff Counsel
- $\operatorname{Mr.}$ Tom Estes, Deputy Director, Administration and Finance Division
- Ms. Kristen Garner, Executive Assistant
- Ms. Elizabeth Huber, Legislative Director
- Mr. Howard Levenson, Director, Sustainability Program
- Ms. Cara Morgan, Chief, Local Assistance and Market Development Division
- $\operatorname{Mr.}$ Jon Myers, Assistant Director, Office of Public Affairs
- Mr. Trevor O'Shaughnessy, Supervisor, Jurisdiction Compliance and Audit

iii

APPEARANCES CONTINUED

STAFF

 $\operatorname{Mr.}$ Ted Rauh, Director, Waste Compliance and Mitigation Program

Mr. Frank Simpson, Supervisor, Jurisdiction Compliance and Audit

Ms. Lorraine Van Kekerix, Chief, Waste Compliance and Mitigation Program Division

ALSO PRESENT

Ms. Nancy Ewert, City of Ridgecrest

Ms. Bobbie Garcia

Mr. Keith Lemieux, Lemieux & O'Neill

Mr. Jim McRea, City of Ridgecrest

Mr. Steven Morgan, Mayor, City of Ridgecrest

iv INDEX PAGE Т CALL TO ORDER 1 ROLL CALL AND DECLARATION OF OUORUM III OPENING REMARKS 1 IV REPORTS AND PRESENTATIONS V PUBLIC COMMENT VI CONSENT AGENDA 6 VII CONTINUED BUSINESS AGENDA ITEMS VIII NEW BUSINESS AGENDA ITEMS Permitting and Compliance Consideration Of The Grant Awards For The Waste Tire Enforcement Grant Program (Tire Recycling Management Fund, FY 2008/09) 10 Motion Vote 10 Public Hearing And Consideration Of The Imposition Of Penalties Against The City Of Ridgecrest, Kern County, Pursuant To Compliance Order IWMA BR07-07 (Public Resources Code Section 41850) And Consideration Of Potential Modifications To The Existing Compliance Order 22 104 Decision Consideration Of The 2005/2006 Biennial Review 3. Findings For The Source Reduction And Recycling Element And The Household Hazardous Waste Element For Mendocino County: City Of Ukiah 6 7 Motion Vote Strategic Policy Development Discussion On The Status Of The Paint Product Stewardship Initiative Memorandum Of Understanding(Committee Only)

V INDEX CONTINUED PAGE

		11101
5. Moti Vote		13 18 18
6. Moti Vote		19 21 21
М	arket Development and Sustainability	
7.	Consideration Of The Grant Awards For The Tire-Derived Product Grant Program And Conditional Cancellation Of The Tire-Derived Product Grant Program Solicitation For Fiscal Year 2009/10 (Tire Recycling Management Fund, FY 2008/09)	11
Moti Vote		13 13
	BOARD MEMBERS COMMENT	±3
х.	ADJOURNMENT	106

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

107

Reporter's Certificate

PROCEEDINGS 1 2 CHAIRPERSON BROWN: Good morning. Thank you for 3 the little extra time. We are trying to get a 4 presentation up and available to those people who are listening. So part of it's going to be delayed. So I 6 thank you for your indulgence. Welcome to the March Board meeting of the 8 California Integrated Waste Management Board. I'd like to call the meeting to order and ask Kristen to call the 10 roll. 11 EXECUTIVE ASSISTANT GARNER: Kuehl? 12 BOARD MEMBER KUEHL: Here. 13 EXECUTIVE ASSISTANT GARNER: Laird? BOARD MEMBER LAIRD: Here. 14 EXECUTIVE ASSISTANT GARNER: Migden? 15 BOARD MEMBER MIGDEN: Here. 16 EXECUTIVE ASSISTANT GARNER: Mulé? 17 BOARD MEMBER MULÉ: Here. 18 19 EXECUTIVE ASSISTANT GARNER: Brown? CHAIRPERSON BROWN: Here. 20 Any ex partes to report? 21 Up to date. 22 23 Okay. I'd like to remind people in the audience

There are speaker slips and agendas in the back

24 to please turn your cell phones into the vibrate mode.

- 1 of the room. If you would like to speak to any of the
- 2 items, please fill out a speaker slip and bring it to
- 3 Kristen.
- 4 We will be going into closed session today at the
- 5 conclusion of our regular business.
- 6 And I'd like to ask everybody to stand for the
- 7 Pledge of Allegiance.
- 8 (Thereupon the Pledge of Allegiance was
- 9 Recited in unison.)
- 10 CHAIRPERSON BROWN: Thank you.
- 11 And now, this morning we have a somewhat sad,
- 12 somewhat joyous depends on your perspective occasion.
- 13 And I'd like, at this time, to take a few minutes to
- 14 recognize and honor an employee who is retiring after many
- 15 years of service with the Board.
- Bobbie Garcia, could you join us up here.
- 17 There you are. Come join us up in front.
- 18 Bobbie came to the Board in 1992 after a career
- 19 as a State Park Ranger with the Parks and Recreation
- 20 Department. She'd worked under five different governors,
- 21 starting with Governor Jerry Brown, George Deukmejian,
- 22 Pete Wilson, Gray Davis, and now Arnold Schwarzenegger,
- 23 and too many members to count.
- 24 She has been an invaluable employee, having
- 25 worked on many projects for the Board, including the

- 1 Board's Landfill Facility Compliance Study, the
- 2 post-closure financial assurance, and the Board's Organics
- 3 Policy Road Map, among many other things during her 17
- 4 years of service.
- 5 Hard working, smart, dedicated, Bobbie has done a
- 6 remarkable job and will leave very large shoes to fill.
- 7 We will miss you, Bobbie, and it won't be the
- 8 same place here without you. We wish you the very best of
- 9 luck in your retirement. And don't be a stranger.
- 10 So we have a special resolution. But, at this
- 11 time, I think I'm going to turn it back to Mark for a
- 12 presentation.
- 13 EXECUTIVE DIRECTOR LEARY: Thank you, Madam
- 14 Chair. Good morning, members. I appreciate giving me two
- 15 seconds.
- 16 Before you head up there to get the resolution,
- 17 Bobbie, I wanted to give you a little memo -- or
- 18 memorabilia from the executive staff.
- 19 Those who know Bobbie know that she's an avid
- 20 long-distance runner, completed something in the
- 21 neighborhood of a bazillion marathons. And if you are on
- 22 the 25th floor over lunchtime or walking the stairways
- 23 over lunchtime or in the early morning, you're very likely
- 24 to run into Bobbie doing the stairs up and down. So we
- 25 thought that Bobbie would be an employee, as she leaves,

1 that would be worthy of a Board Gold Medal. 2 (Applause.) EXECUTIVE DIRECTOR LEARY: And on the back of 3 4 this gold medal it says, "To Bobbie Garcia for a marathon 5 of service to the CIWMB - 1992 to 2009." 6 So, Bobbie, from us. (Applause.) CHAIRPERSON BROWN: And, Bobbie, we'd like to 8 9 have you up on the dais to take some photos and do the 10 presentation. 11 Where's the camera? ASSISTANT DIRECTOR MYERS: It's on its way down. 12 13 CHAIRPERSON BROWN: Is it longer than two 14 minutes? ASSISTANT DIRECTOR MYERS: No, they're heading 15 16 down now. BOARD MEMBER LAIRD: Are they honoring her by 17 18 taking the stairs? 19 (Laughter.) BOARD MEMBER KUEHL: Do you want to say anything 20 21 to all your fans out there? 22 CHAIRPERSON BROWN: Actually, I'll hold it so you 23 don't have to lean over. 24 MS. GARCIA: Oh, thank you. 25 I just wanted to say it's really, really tough.

- 1 I don't cry easily and I don't think I will today, but
- 2 it's been a hard decision. And everybody says
- 3 congratulations. But as some of you know, I'm not a
- 4 workaholic, but close, and it's hard to make that
- 5 transition and leave the family I have here and the cause
- 6 which I truly believe in. It's a powerful one. So I just
- 7 want to say it's not an easy decision. And I know a lot
- 8 of people say congratulations and it is because I'm
- 9 moving on to another chapter but I just -- it's hard --
- 10 it's like when you get married and you're leaving your
- 11 family to go off on to something new. And so it's a
- 12 little, you know, I think -- Rubia came up with a new
- 13 word, "bitter sweet," today. It's going to be that.
- 14 But I do want to say, as a quote from one of my
- 15 favorite movies, Contact, "it's been one hell of a ride."
- 16 So thank you.
- 17 (Laughter.)
- 18 (Applause.)
- 19 ASSISTANT DIRECTOR MYERS: Madam Chair, we could
- 20 assemble everyone after the Board meeting and we'll take
- 21 pictures out on the balcony there.
- 22 CHAIRPERSON BROWN: Considering we're doing
- 23 photos, I will keep the resolution then, so that you have
- 24 to come back.
- 25 MS. GARCIA: Okay. What time should I be back?

- 1 CHAIRPERSON BROWN: Right around lunch.
- MS. GARCIA: Lunchtime?
- 3 BOARD MEMBER KUEHL: People don't have phones?
- 4 What's going on here?
- 5 CHAIRPERSON BROWN: Yeah, we'll call you when
- 6 there's time. But we'll come get you.
- 7 Okay. Thank you, Bobbie.
- 8 MS. GARCIA: Thank you.
- 9 CHAIRPERSON BROWN: As soon as we can, we'll take
- 10 a break and call you, so you don't have to go home and
- 11 come back.
- 12 Okay. Now, The Executive Director's Report.
- Mark, do you have a report?
- 14 EXECUTIVE DIRECTOR LEARY: You know, Madam Chair,
- 15 in the interests of time -- I have some revenue data with
- 16 regards to fund conditions and declining revenue
- 17 projections, a bunch of numbers that probably would be
- 18 better conveyed in a memo to you all. So rather than do a
- 19 detailed Executive Director's report, I'll pass on that
- 20 and follow up with a memo about how we're seeing the
- 21 declining revenue in our various funds sources, as a
- 22 result of a declining economy.
- 23 CHAIRPERSON BROWN: Okay. Thank you.
- 24 Then we will move immediately to our agenda. Our
- 25 Consent Agenda is one item. Item 3 is on the Consent

- 1 Agenda.
- Do we have any questions or comments? Or can I
- 3 have a motion on the Consent Agenda?
- 4 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
- 5 the Consent Agenda.
- 6 BOARD MEMBER LAIRD: Second.
- 7 CHAIRPERSON BROWN: It's been moved by Member
- 8 Mulé, seconded by Member Laird.
- 9 Kristen, can you call the roll.
- 10 EXECUTIVE ASSISTANT GARNER: Kuehl?
- BOARD MEMBER KUEHL: Aye.
- 12 EXECUTIVE ASSISTANT GARNER: Laird?
- BOARD MEMBER LAIRD: Aye.
- 14 EXECUTIVE ASSISTANT GARNER: Migden?
- BOARD MEMBER MIGDEN: Aye.
- 16 EXECUTIVE ASSISTANT GARNER: Mulé?
- 17 BOARD MEMBER MULÉ: Aye.
- 18 EXECUTIVE ASSISTANT GARNER: Brown?
- 19 CHAIRPERSON BROWN: Aye.
- 20 Consent Agenda passes.
- 21 We have items 1 revised, 7 revised on the Fiscal
- 22 Consent -- Fiscal Consent Calendar.
- 23 Items 2, 5 revised, and 6 will be heard by the
- 24 full Board. We will do that without presentation for
- $25\,$ items 5 and 6 and hold those first. And we will do Item $2\,$

- 1 following those two other revised items.
- 2 So we'll go first to our Fiscal Consent Item 1.
- 3 And before we do the presentation, I'll ask
- 4 Committee Chair Mulé if she wishes to make a Committee
- 5 report.
- 6 BOARD MEMBER MULÉ: Thank you, Madam Chair. Yes,
- 7 I do, a brief one though.
- 8 We did hear two items in this Committee. One is
- 9 the fiscal consent item, which we're about to hear on the
- 10 Waste Tire Enforcement Grant Program, the awarding of
- 11 grants. And then the other item was the biennial review
- 12 findings for the city of Ukiah, which is on consent.
- 13 That concludes my report. Thank you.
- 14 CHAIRPERSON BROWN: Thank you.
- 15 Ted. Item 1.
- 16 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR
- 17 RAUH: Thank you, Chair Brown and Board members. I'm Ted
- 18 Rauh. I serve as the Waste Compliance and Mitigation
- 19 Program Director.
- 20 Agenda Item 1, revised, presents the staff's
- 21 recommendations to award the 2008-9 Waste Tire Enforcement
- 22 Grant Program. In accordance with this grant program's,
- 23 Board-approved grant award process, eligibility criteria
- 24 and evaluation process, staff has evaluated 39 submitted
- 25 applications, which are being recommended for funding.

- 1 Staff worked with the grant applicants and in
- 2 certain cases grant applications were adjusted. Two
- 3 current year grantees, who did not submit applications for
- 4 this grant cycle, have also indicated they'd like to
- 5 continue with remaining grant funds in this year's cycle
- 6 into next year, which means as a result of a Board action
- 7 approving these 39 grants plus the two that would continue
- 8 forward, we have approximately 80 percent of the state
- 9 covered through grantees carrying out these program
- 10 activities.
- 11 The Board allocated \$6,750,000 for this program.
- 12 And staff recommends that the Board approve the proposed
- 13 39 grant awards totaling \$6,749,989, all but 11 of the
- 14 dollars allocated, and that you adopt Resolution 2009-43
- 15 revised.
- And since the Committee meeting, the item was
- 17 revised. I wanted to bring that to your attention. The
- 18 only revision was that the city of San Bernardino was
- 19 designated the city of San Bernardino. In the initial
- 20 item, it was just down as San Bernardino. So we wanted to
- 21 clarify both in the resolution and the item that the award
- 22 would be made to the city of San Bernardino.
- 23 And that concludes my presentation.
- 24 CHAIRPERSON BROWN: Thank you for the
- 25 clarification, Ted.

- 1 Do we have any questions on this item?
- 2 BOARD MEMBER MULÉ: Madam Chair --
- 3 CHAIRPERSON BROWN: Carole.
- 4 BOARD MEMBER MIGDEN: Thank you very much.
- 5 I just wanted to be clear. I thought we were
- 6 committing 2 million, and then I thought during Policy
- 7 there were issues about reprogramming and 4 million left
- 8 over and opportunities to look at that. Am I correct,
- 9 Madam Chair?
- 10 CHAIRPERSON BROWN: That's Item 7.
- BOARD MEMBER MIGDEN: I beg your pardon. Beg
- 12 your pardon.
- 13 CHAIRPERSON BROWN: The tire-derived products.
- 14 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
- 15 Resolution 2009-43 revised.
- BOARD MEMBER KUEHL: Second.
- 17 CHAIRPERSON BROWN: It's been moved by Member
- 18 Mulé, seconded by Member Kuehl.
- 19 Kristen, can you call the roll.
- 20 EXECUTIVE ASSISTANT GARNER: Kuehl?
- BOARD MEMBER KUEHL: Aye.
- 22 EXECUTIVE ASSISTANT GARNER: Laird?
- BOARD MEMBER LAIRD: Aye.
- 24 EXECUTIVE ASSISTANT GARNER: Migden?
- BOARD MEMBER MIGDEN: Aye.

Please note: These transcripts are not individually reviewed and approved for accuracy.

- 1 EXECUTIVE ASSISTANT GARNER: Mulé?
- 2 BOARD MEMBER MULÉ: Aye.
- 3 EXECUTIVE ASSISTANT GARNER: Brown?
- 4 CHAIRPERSON BROWN: Aye.
- 5 Thank you.
- 6 The motion passes.
- 7 And we'll move next to Item 7.
- 8 SUSTAINABILITY PROGRAM DIRECTOR LEVENSON: Thank
- 9 you, Madam Chair. Howard Levenson with the Sustainability
- 10 Program.
- 11 This is Item 7 concerning the grant awards for
- 12 Tire-Derived Product Grant Program for this year.
- 13 As you know, we do have \$2 million available in
- 14 fiscal year '08 and '09 funds for this program. And we
- 15 are recommending 22 applicants being funded with those \$2
- 16 million, 20 of those fully funded and two partially
- 17 funded.
- 18 At the Committee meeting last week, you asked
- 19 staff to add the county names to the list of proposed
- 20 appli -- or proposed awardees, and we've done that in the
- 21 revisions that you have before you.
- 22 Also, as I notified you, we did find an error
- 23 when we went through the revisions. And one of the cities
- 24 that had been allocated to northern California should have
- 25 been in southern California. And so that changed a couple

- 1 of the rankings of some of the randomly selected
- 2 applicants. And that also is included in the revisions
- 3 before you.
- 4 We've had discussions with all of those affected
- 5 parties. And the two that -- in particular, Desert Hot
- 6 Springs and Santa Clarita, while they would not receive --
- 7 be proposed for funding for right now, they do have a very
- 8 good chance of being funded next month when we bring you
- 9 the tire reallocation item.
- 10 I do want to also indicate that you had a lengthy
- 11 discussion about the north-south geographic distribution
- 12 policy. Staff is committed to bringing you an item in the
- 13 next couple of months at the Policy Committee for your
- 14 consideration of any potential changes regarding that
- 15 policy.
- So with that, I would like to recommend that the
- 17 Board approve Option 1 and adopt Resolution 2009-42
- 18 revised.
- 19 And we'd be happy to answer any questions.
- 20 CHAIRPERSON BROWN: Thank you, Howard.
- 21 Do you have any questions?
- 22 Carol, did you have --
- BOARD MEMBER MIGDEN: No, thank you.
- 24 CHAIRPERSON BROWN: Okay. We're good?
- 25 Any other questions?

- 1 Okay. Can I have a motion?
- 2 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
- 3 Resolution 2009-42 revised.
- 4 BOARD MEMBER KUEHL: Second.
- 5 CHAIRPERSON BROWN: It's been moved by Member
- 6 Mulé, seconded by Member Kuehl.
- 7 Kristen, can you call the roll.
- 8 EXECUTIVE ASSISTANT GARNER: Kuehl?
- 9 BOARD MEMBER KUEHL: Aye.
- 10 EXECUTIVE ASSISTANT GARNER: Laird?
- BOARD MEMBER LAIRD: Aye.
- 12 EXECUTIVE ASSISTANT GARNER: Migden?
- BOARD MEMBER MIGDEN: Aye.
- 14 EXECUTIVE ASSISTANT GARNER: Mulé?
- 15 BOARD MEMBER MULÉ: Aye.
- 16 EXECUTIVE ASSISTANT GARNER: Brown?
- 17 CHAIRPERSON BROWN: Aye.
- The motion passes.
- 19 Howard, thank you very much for making the
- 20 changes. It is helpful seeing the counties and all the
- 21 additional information. I appreciate that.
- Okay. Next we will move to the items that are
- 23 going to be heard by the full Board. And we're going to
- 24 start with Item 5 in that.
- I think it's Howard again.

- 1 The RMDZ Loan Designation.
- 2 SUSTAINABILITY PROGRAM DIRECTOR LEVENSON: Thank
- 3 you, Madam Chair.
- 4 And I'm not sure what length of presentation
- 5 you'd like. Mitch is going to come up here. And I think
- 6 we would like for the record to indicate the changes that
- 7 we made in the item and just keep it to that.
- 8 CHAIRPERSON BROWN: Um-hmm, exactly.
- 9 SUSTAINABILITY PROGRAM DIRECTOR LEVENSON: Thank
- 10 you.
- 11 CHAIRPERSON BROWN: Hi, Mitch.
- 12 LOCAL ASSISTANCE AND MARKET DEVELOPMENT DIVISION
- 13 BRANCH MANAGER DELMAGE: Good morning, Madam Chair and
- 14 members. My name is Mitch Delmage.
- 15 CHAIRPERSON BROWN: Speak closer to the
- 16 microphone, make sure it's on.
- 17 LOCAL ASSISTANCE AND MARKET DEVELOPMENT DIVISION
- 18 BRANCH MANAGER DELMAGE: My name's Mitch --
- 19 CHAIRPERSON BROWN: Good.
- 20 LOCAL ASSISTANCE AND MARKET DEVELOPMENT DIVISION
- 21 BRANCH MANAGER DELMAGE: -- Delmage. I'm a manager in the
- 22 Local Assistance and Market Development Division.
- 23 Staff was asked to revise this item and include a
- 24 comparison between the objectives used in the last
- 25 designation cycle and what we're recommending for this new

- 1 cycle.
- 2 Additionally, we were asked to more clearly
- 3 delineate the importance of applicants acknowledging how
- 4 they'll address the current market conditions for recycled
- 5 commodities.
- 6 One last thing, just as a reminder. According to
- 7 regulation, the Board has until March 31st of each year to
- 8 decide whether or not to initiate a designation cycle for
- 9 new zones.
- 10 Okay. You should have, in front of you, the new
- 11 Attachment 2 that provides the comparison you requested.
- 12 But first I'd like to direct you to the revised Attachment
- 13 1 for the record. We need to note that one of the changes
- 14 was not properly underlined. In Attachment 1 in the
- 15 opening paragraph of Section 2, there's a new phrase,
- 16 quote, "and to assist them in staying viable to help
- 17 compensate for the current economic downturn, " end quote.
- 18 That should have been underlined.
- 19 There are also some minor tweaks in punctuation
- 20 to accommodate this new phrase.
- 21 Now for the comparison. In Table 1 you'll find
- 22 the regulations that established the four statewide
- 23 objectives. Table 2 shows how these four objectives were
- 24 incorporated into the six broader objectives used in the
- 25 last designation cycle in 1995.

- 1 We also explain why we made these changes. In
- 2 essence, we included the substance of the original
- 3 objectives and we identified them plainly in the scoring
- 4 sheet, which will hopefully make them clearer to the
- 5 applicant.
- 6 We also added eight additional targeted criteria.
- 7 We hope that this new approach will bring in
- 8 multi-jurisdictional zones from a diversity of areas
- 9 throughout the state, including rural areas.
- 10 And, by the way, we've already been contacted by
- 11 a couple of rural areas that have expressed an interest in
- 12 applying.
- 13 Finally, we included more detail on budgets,
- 14 planning, resources, evaluation metrics, and completeness.
- 15 In closing, I wanted to let you know that the
- 16 actual application will closely follow these new scoring
- 17 criteria so that it will be easier for the applicants to
- 18 assemble the application, and it'll make it much easier
- 19 for staff to review.
- 20 This completes my presentation. Staff recommends
- 21 that the Board approve Option 1 and adopt Resolution
- 22 2009-33 revised.
- 23 Are there any questions?
- 24 CHAIRPERSON BROWN: Thank you, Mitch, very much
- 25 for doing all that. It's quite helpful to look at.

- 1 Any questions from any members?
- 2 Rosalie, do you want to start?
- 3 BOARD MEMBER MULÉ: Thank you, Madam Chair.
- 4 I just have one question on the scoring criteria.
- 5 We go to Section 2. And that first paragraph we go down
- 6 to 1, 2, 3, 4, where we added "and to assist them in
- 7 staying viable." When I read that, I interpret that that
- 8 we have to do both. And so I was wondering if we could
- 9 just add "and" -- to "and" put a slash "or" -- "and/or to
- 10 assist them in staying viable." If we could just make
- 11 that one little change, that would be helpful to me. I
- 12 think it would just clarify our intent.
- 13 SUSTAINABILITY PROGRAM DIRECTOR LEVENSON: We
- 14 certainly can do that. And assuming the Board okays that
- 15 in the resolution -- revised resolution, we'll make that
- 16 change today and it will be entered into the record.
- 17 CHAIRPERSON BROWN: Okay.
- BOARD MEMBER MULÉ: Thank you.
- 19 CHAIRPERSON BROWN: Everybody okay with that?
- 20 "And/or to assist" --
- 21 BOARD MEMBER MULÉ: Yes.
- 22 CHAIRPERSON BROWN: -- is that --
- 23 BOARD MEMBER MULÉ: So it would read, "Target
- 24 existing manufacturing business to include more recovered
- 25 materials and/or to assist them in staying viable to help

- 1 compensate for the current economic downturn."
- 2 BOARD MEMBER KUEHL: So the "them" refers to
- 3 manufacturing businesses -- assist manufacturing
- 4 businesses to stay viable?
- 5 SUSTAINABILITY PROGRAM DIRECTOR LEVENSON: That's
- 6 correct.
- 7 CHAIRPERSON BROWN: As opposed to the zone.
- 8 Does it refer to the zone or to the manufacturing
- 9 business?
- 10 SUSTAINABILITY PROGRAM DIRECTOR LEVENSON: It's
- 11 to the manufacturing businesses.
- 12 CHAIRPERSON BROWN: Okay. Any other questions or
- 13 changes to the scoring criteria?
- 14 BOARD MEMBER KUEHL: Good catch.
- 15 CHAIRPERSON BROWN: All right. I think we're
- 16 good with the changes that Member Mulé has suggested,
- 17 which is to add the "and/or" in line 3 of section 2 in the
- 18 scoring criteria. And staff will reflect the changes.
- 19 Can I have a motion on the resolution?
- 20 BOARD MEMBER MIGDEN: So moved.
- BOARD MEMBER MULÉ: Second.
- 22 CHAIRPERSON BROWN: It's been moved by Member
- 23 Migden and seconded.
- 24 Kristen, can you call the roll.
- 25 EXECUTIVE ASSISTANT GARNER: Kuehl?

- 1 BOARD MEMBER KUEHL: Aye.
- 2 EXECUTIVE ASSISTANT GARNER: Laird?
- 3 BOARD MEMBER LAIRD: Aye.
- 4 EXECUTIVE ASSISTANT GARNER: Migden?
- 5 BOARD MEMBER MIGDEN: Aye.
- 6 EXECUTIVE ASSISTANT GARNER: Mulé?
- 7 BOARD MEMBER MULÉ: Aye.
- 8 EXECUTIVE ASSISTANT GARNER: Brown?
- 9 CHAIRPERSON BROWN: Aye.
- 10 Resolution passes.
- 11 And we'll move next to Item 6.
- 12 And, Rubia.
- 13 CHIEF DEPUTY DIRECTOR PACKARD: Thank you, Madam
- 14 Chair. Good morning, Board members. Rubia Packard with
- 15 the Executive Office.
- 16 We are just going to cover a couple of items on
- 17 the new Strategic Directives in Item 6.
- 18 The Board members, you had asked us to take a
- 19 look at the language in SD 3.8 and rephrase that to
- 20 reflect what you -- the concerns that you had. So we did
- 21 do that on page 2 of Attachment 1. SD 3.8 now reads,
- 22 "seek statutory changes to the California Oil Recycling
- 23 Act."
- 24 BOARD MEMBER MIGDEN: What were the changes we
- 25 sought?

- 1 CHIEF DEPUTY DIRECTOR PACKARD: You asked that we
- 2 take a look at 3.8 -- SD 3.8 and rewrite that to make it a
- 3 little more specific regarding the statutory changes that
- 4 we were looking for -- that you were directing us to look
- 5 for relative to the California Oil Recycling Act.
- 6 BOARD MEMBER MIGDEN: I'm not contesting. I just
- 7 wondered what 3.8 was. I'm just worrying about the
- 8 substance, not looking at --
- 9 CHAIRPERSON BROWN: Carole, Attachment 1 -- and
- 10 we're looking at page 2, which is -- SD 3 is minimize
- 11 waste.
- 12 BOARD MEMBER MIGDEN: That's it. That's all.
- 13 Just for the record. Minimize Waste.
- 14 BOARD MEMBER KUEHL: Yeah. Well, the word
- 15 "refocus" appeared in the original language, and we
- 16 questioned what that might mean. So we asked her to make
- 17 it more specific.
- 18 BOARD MEMBER MIGDEN: Right.
- 19 CHIEF DEPUTY DIRECTOR PACKARD: Okay. Thank you.
- 20 Anyway, the language now reads, "Seek statutory
- 21 changes to the California Oil Recycling Act to streamline
- 22 the administration of the Used Oil Program and to support
- 23 efforts to increase the collection, recycling, and
- 24 re-refining of used oil."
- 25 And then the second thing I wanted to mention is

- 1 that we did receive a comment letter from the County of
- 2 San Bernardino with a concern about Strategic Directive 4,
- 3 Landfill Management, 4.5, which covers the implementation
- 4 of regulations for landfill gas monitoring plans. And the
- 5 concern was that this strategic directive might preclude
- 6 time extensions for those who are subject to it. And we
- 7 just wanted to make the statement that the language is not
- 8 intended to change what's already in the regulations,
- 9 which is the regulations do provide for time extensions.
- 10 So those are the only two areas that we need to
- 11 cover that have something new.
- 12 CHAIRPERSON BROWN: Okay. Great.
- Good job on 3.8.
- 14 Does anybody have any questions regarding any of
- 15 these?
- Okay. Can I have a motion on the changes.
- 17 BOARD MEMBER KUEHL: So moved.
- 18 BOARD MEMBER MULÉ: Second.
- 19 CHAIRPERSON BROWN: It's been moved by Member
- 20 Kuehl, seconded by Member Mulé.
- 21 Kristen, can you call the roll.
- 22 EXECUTIVE ASSISTANT GARNER: Kuehl?
- BOARD MEMBER KUEHL: Aye.
- 24 EXECUTIVE ASSISTANT GARNER: Laird?
- BOARD MEMBER LAIRD: Aye.

- 1 EXECUTIVE ASSISTANT GARNER: Migden?
- BOARD MEMBER MIGDEN: Aye.
- 3 EXECUTIVE ASSISTANT GARNER: Mulé?
- 4 BOARD MEMBER MULÉ: Aye.
- 5 EXECUTIVE ASSISTANT GARNER: Brown?
- 6 CHAIRPERSON BROWN: Aye.
- 7 Resolution 2009-44 passes.
- 8 Thank you, Rubia and staff, for making those
- 9 changes.
- 10 And we will move next to full Board Item No. 2,
- 11 consideration of -- or this is a public hearing in
- 12 consideration of imposition of penalties against the City
- 13 of Ridgecrest in Kern County.
- 14 While we get everybody situated...
- 15 Okay. We are now going to hold a public hearing
- 16 on whether or not to impose penalties on the City of
- 17 Ridgecrest for failure to adequately implement its Source
- 18 Reduction and Recycling Element.
- 19 (Thereupon an overhead presentation was
- 20 Presented as follows.)
- 21 CHAIRPERSON BROWN: This hearing will be a little
- 22 more structured than our typical agenda item hearings.
- 23 And the process is laid out in Attachment 3 of the item,
- 24 which I will summarize briefly now.
- In a moment, I'm going to ask everyone that plans

- 1 on testifying in this hearing to rise and be sworn in by
- 2 the court reporter as a group.
- 3 After that, our staff will make a presentation,
- 4 during which the Board members may ask any questions.
- 5 Representatives from the City of Ridgecrest will then make
- 6 a presentation, during which the Board members may also
- 7 ask questions.
- 8 Both the staff and the city will then hear one
- 9 more opportunity to present any information they wish to
- 10 in rebuttal.
- 11 After the presentations are concluded, the Board
- 12 will go into closed session to deliberate on a decision.
- 13 Unless any Board members has any questions at
- 14 this time, I'd like to ask everyone who plans on
- 15 testifying to stand and be sworn in.
- 16 Any questions?
- 17 Turn to the court reporter, who's right here, and
- 18 he will swear you in.
- 19 (Thereupon prospective witnesses were sworn, by
- 20 the court reporter, to tell the truth, the whole
- 21 truth and nothing but the truth.)
- 22 CHAIRPERSON BROWN: Thank you.
- 23 Any Board members have any questions?
- Okay. We will move first then to the staff
- 25 presentation.

- 1 Ted.
- 2 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR
- 3 RAUH: Yes. Thank you, Chair Brown.
- 4 As a brief introduction, as you've already
- 5 indicated, this is a public hearing and considering the
- 6 imposition of penalties against the City of Ridgecrest,
- 7 Kern County, pursuant to Compliance Order from the Board,
- 8 IWMA BR07-07.
- 9 Following a legal counsel presentation on the
- 10 legal matters regarding this matter, staff will present
- 11 the results of its review of the City of Ridgecrest's
- 12 compliance with the aforementioned compliance order and
- 13 will also discuss the likelihood of the City of Ridgecrest
- 14 being able to meet certain upcoming requirements in the
- 15 compliance order.
- 16 Staff will also provide options regarding the
- 17 potential penalties the Board can consider resulting from
- 18 the City of Ridgecrest's lack of compliance with the
- 19 Board's order.
- 20 Here to present the legal basis for the Board's
- 21 action is Tamar Dyson.
- 22 STAFF COUNSEL DYSON: Good morning, Madam Chair
- 23 and Board members. My name is Tamar Dyson and I'm with
- 24 the Legal Office. And today I'm going to give you the
- 25 legal framework for this hearing.

- Public Resources Code Section 41825 provides that 1 2 after a public hearing, if the Board finds that a jurisdiction has failed to implement its Source Reduction 4 and Recycling Element, the Board can issue an Order of Compliance, which includes a schedule for achieving compliance and includes all the conditions necessary for 6 the jurisdiction to implement its Source Reduction and Recycling Element. The compliance order requires that the jurisdiction submit and implement a local assistance plan. 9 10 --000--STAFF COUNSEL DYSON: Public Resources Code 11 Section 41850 provides that if the Board finds that the 13 jurisdiction has failed to make a good faith effort to complete the compliance order and implement a Source 14 Reduction and Recycling Element, the Board has the option 15 of imposing penalties for up to \$10,000 a day until it has 16 been implemented. 17 --000--18 19 STAFF COUNSEL DYSON: So in this matter, the compliance order was issued to the City of Ridgecrest in 20 21 September 2007. The order required that the city, among 22 other things, complete a new base year after doing a new generation study and submit and implement a local 23 24 assistance plan.
- 25 The city has indicated that it is not going to

- 1 complete the compliance order.
- 2 --000--
- 3 STAFF COUNSEL DYSON: So now there's two issues
- 4 remaining before the Board. Did the City of Ridgecrest
- 5 fail to make a good faith effort to implement the local
- 6 assistance plan? And if so, what is the appropriate
- 7 penalty to be imposed for this failure?
- 8 --000--
- 9 STAFF COUNSEL DYSON: Now, as another matter of
- 10 interest, I want to point out that Public Resources Code
- 11 Section 41850.5 provides that if an administrative penalty
- 12 is imposed, the Board is to deposit it into the local
- 13 government assistance account, and then that is used for
- 14 the purposes of assisting local governments in complying
- 15 with the diversion requirements and cannot be used for the
- 16 Board's administrative purposes.
- 17 --00o--
- 18 STAFF COUNSEL DYSON: And there's one other thing
- 19 that I'd like to do today before turning this over to Mr.
- 20 Simpson. And, that is, I have a binder here that has been
- 21 provided to the city and it has -- it contains several
- 22 items that I'd like to put into the administrative record.
- The first thing is a Notice of Hearing and then
- 24 also the proof that the Notice of Hearing has been served.
- 25 It includes the agenda item and all attachments. It

- 1 includes copies of letters and Emails that have been
- 2 referenced in Attachment 4 of the item. And it also
- 3 includes the proof of service to the City of Ridgecrest.
- 4 Now, after this had been served to the City of
- 5 Ridgecrest, we received some other items from -- letters
- 6 from some citizens of the City of Ridgecrest. We provided
- 7 those to the jurisdiction today.
- 8 And now I'd like to take this binder and give it
- 9 to the court reporter.
- 10 So before I pass this over to Mr. Simpson, does
- 11 the Board have any questions about the legal process?
- 12 Thank you.
- 13 JURISDICTION COMPLIANCE & AUDIT SUPERVISOR
- 14 SIMPSON: Madam Chair, members of the Board. Good
- 15 morning. I'm Frank Simpson with the Jurisdiction
- 16 Compliance and Audit Section.
- 17 Public Resources Code Section 41780 requires
- 18 cities, counties and regional agencies to develop a plan
- 19 to divert 50 percent of their waste through the Source
- 20 Reduction and Recycling Element and then to implement that
- 21 plan.
- 22 On September 19th, 2007, the Board considered the
- 23 2003-04 biennial review for the City of Ridgecrest, and
- 24 the Board found that the city had not made a good faith
- 25 effort to implement its Source Reduction and Recycling

- 1 Element with selected diversion programs in order to meet
- 2 the 50 percent requirement.
- 3 The Board found that the diversion programs that
- 4 the city had implemented were not providing sufficient
- 5 reduction in disposal to support the city's diversion rate
- 6 of 64 percent in 2003 and 70 percent in 2004. As a
- 7 result, the Board issued the compliance order.
- 8 The compliance order contains several important
- 9 dates and tasks:
- 10 The order requires the city to prepare and agree
- 11 to a local assistance plan by January 31st of 2008;
- 12 The order requires the city to submit a new base
- 13 year; and
- 14 The order requires that the local assistance plan
- 15 be fully implemented by January 31st, 2010.
- 16 The city has reached month 15 of its 24-month
- 17 compliance order; and as of today has not implemented any
- 18 major local assistance plan programs, which include
- 19 completing a new waste generation study, based on 2006 or
- 20 more recent data, which was due on September 30th, 2008;
- 21 they have not established a new base year, which was due
- 22 September 30th, 2008; or completed a materials recovery
- 23 facility feasibility study, which was due December 31st,
- 24 2008.
- 25 In addition to the missed program implementation

- 1 dates, staff are concerned about the upcoming due dates
- 2 for the full implementation of a mandatory commercial
- 3 recycling program and a mandatory residential recycling
- 4 program.
- 5 One of the major local assistance plan tasks is
- 6 to conduct a new waste generation study and a new base
- 7 year. The city requested assistance from the Board's
- 8 Local Assistance and Market Development Division to
- 9 complete the waste generation study, which is necessary to
- 10 complete the new base year. Between February 2008 and
- 11 June 2008, Local Assistance and Market Development staff
- 12 conducted two site visits to Ridgecrest to gather
- 13 information on diversion at large businesses, recycling
- 14 centers, schools, and the Naval Air Weapons Station.
- They corresponded with businesses and
- 16 institutions to gather additional data, and they prepared
- 17 that data for the city to include in the new base year.
- 18 Staff also responded to questions via telephone and Email.
- 19 On November 7th, 2008, the city sent a letter to
- 20 the Board stating that the city had failed "failed,"
- 21 that's their words to complete the new base year study
- 22 and that the requirement to complete a new base year was
- 23 not justified.
- Let me point out that the city's failure to
- 25 complete the generation study and a new base year is very

- 1 significant. The base year lays the foundation for the
- 2 city's diversion rate calculation and it plays a crucial
- 3 role in the accuracy of a jurisdiction's diversion rate
- 4 estimate.
- 5 As background, most jurisdictions established a
- 6 base year in the 1990 Source Reduction and Recycling
- 7 Element that was approved by the Board.
- 8 Measurement accuracy has been an issue since
- 9 1990, and the Board has undertaken many efforts to improve
- 10 diversion rate accuracy.
- 11 The base year plays a key role in determining the
- 12 diversion rate for all subsequent years.
- 13 So if the base year is inaccurate or if there are
- 14 major changes in the nature of a jurisdiction's solid
- 15 waste production, large errors that understate or
- 16 overstate the base-level generation can result in
- 17 inaccurate diversion rates. As a result, inaccuracies in
- 18 base-year data can have a huge positive or negative impact
- 19 on the estimated diversion rate and the jurisdiction's
- 20 ability to quantitatively demonstrate their actual
- 21 progress toward achieving the diversion requirements of
- 22 Public Resources Code Section 41780.
- 23 About one half of all jurisdictions have
- 24 established a new base year. 277 new base years have been
- 25 approved by the Board for 253 jurisdictions statewide. To

- 1 clarify, 24 of those jurisdictions have completed two new
- 2 base years.
- 3 Ridgecrest has also reported diversion rates as
- 4 high as 70 percent. Staff have determined that those
- 5 claims are most likely inaccurate for several reasons:
- 6 The city's 1990 base year indicated that 75
- 7 percent of the city's waste stream originated from the
- 8 commercial sector. That means that if the city diverted
- 9 100 percent of its residential waste, it still could not
- 10 have reached 50 percent diversion without significant
- 11 commercial diversion.
- 12 And the city's commercial diversion relies on
- 13 back hauling and drop-off and buyback activities.
- 14 The commercial back-haul and drop-off data
- 15 collected for the waste generation study do not support
- 16 such a high diversion rate.
- 17 The city has voluntary residential recycling.
- 18 And the existing 1990 base year was predicated on
- 19 volume rather than weight, because at the time the
- 20 landfill was not equipped with scales. Statewide the use
- 21 of scales has improved measurement accuracy incredibly.
- 22 The Local Assistance and Market Development
- 23 Division recognizes that the generation study it has
- 24 worked on is not yet complete. However, the data
- 25 collected to date suggests that the diversion rate for the

- 1 City of Ridgecrest is in the 30 percent range.
- 2 In the past, Local Assistance and Market
- 3 Development staff have only assisted jurisdictions with
- 4 the completion of a waste generation study for a new base
- 5 year. But in this case, to save the City of Ridgecrest
- 6 the cost of a consultant, Local Assistance and Market
- 7 Development staff have agreed to complete the new base
- 8 year for the City of Ridgecrest. And they should be able
- 9 to do that no later than July 2009.
- Now, as you are aware, the city recently
- 11 requested Kern County's assistance. Kern County believes
- 12 jurisdiction-specific factors should be used in diversion
- 13 rate calculations. And they say that would result in a
- 14 more accurate diversion rate that they estimate would be
- 15 just over 50 percent.
- 16 Adjustment factors are applied to base-year
- 17 generation when calculating diversion rates.
- 18 Each jurisdiction has the option of selecting the
- 19 most accurate factors from many combinations of factors,
- 20 or requesting the Board to consider jurisdiction submitted
- 21 documentation for using those other factors.
- There are limited standard jurisdiction-specific
- 23 factors available for Ridgecrest. And the Board only
- 24 approved the use of one of those factors by Kern County
- 25 starting in the year 2004, not in 1990.

1 So staff does not agree with Kern County's

- 2 diversion rate.
- 3 But it is important to remember that diversion
- 4 rates are an indicator of performance that are used in
- 5 combination with diversion program implementation.
- 6 Board staff did not find program implementation
- 7 that supported diversion rates of 50 percent or higher.
- 8 The base year also plays a crucial role as we
- 9 move forward with the new measurement system based on per
- 10 capita disposal goals. Under the new system a
- 11 jurisdiction's 50 percent equivalent per capita disposal
- 12 target is based on a jurisdiction's generation from the
- 13 years 2003 to 2006.
- 14 So if a jurisdiction had an inaccurate high
- 15 diversion rate during those years, the 50 percent per
- 16 capita disposal target would be high, which means the
- 17 jurisdiction could do less diversion. And they could
- 18 still meet the 50 percent equivalent per capita disposal
- 19 target in future years.
- 20 In addition, because the jurisdiction would have
- 21 met their 50 percent equivalent per capita target, the
- 22 jurisdiction's performance would be reviewed by the Board
- 23 once every four years rather than every two years.
- 24 The local assistance plan also requires the city
- 25 to conduct a materials recovery facility feasibility

- 1 study. The city has requested an extension of December
- 2 31st, 2008, to be pushed back to October 2009.
- 3 The local assistance plan also includes mandatory
- 4 commercial and residential recycling programs, and that
- 5 they be established by March 31st, 2009.
- 6 The city's March 12th, 2009, submittal
- 7 acknowledges that the city will not meet the deadline for
- 8 full implementation of mandatory commercial or mandatory
- 9 residential recycling programs.
- 10 The city did adopt a mandatory residential and
- 11 commercial waste collection ordinance on March 18th. But
- 12 the city has told us that the following activities will
- 13 need to occur to achieve full implementation of the
- 14 ordinance, which include:
- 15 Set a protest hearing for March the 30th;
- 16 Conduct a protest hearing and record those
- 17 protests on May the 30th;
- 18 Institute universal collection and add fees to
- 19 the property tax role in July of 2009;
- 20 And then roll out universal collection on January
- 21 1st, 2010.
- In the interim, the city proposes to implement
- 23 commercial cardboard and newspaper collection programs
- 24 using selected recycle-rich commercial accounts by July
- 25 1st, 2009.

- 1 At the time this agenda item was written, details
- 2 of the commercial cardboard and newspaper programs were
- 3 not available for staff review.
- 4 The city has submitted a letter from its
- 5 franchise hauler that outlines a proposal for a
- 6 residential blue can collection of recyclables, such as
- 7 paper, aluminum, and plastic; commercial drop-off
- 8 recycling centers at major commercial developments; and
- 9 the development of a hauler schedule by July 2009.
- 10 The city's March 18th commercial waste collection
- 11 ordinance does not have a specific requirement for a blue
- 12 can program. It only provides an exclusive opportunity
- 13 for the hauler to implement a recycling program.
- 14 Kern County is presently undertaking a
- 15 county-wide solid waste management system planning effort
- 16 to study the future of the county's solid waste and
- 17 recycling system to eventually achieve a 75 percent
- 18 diversion rate.
- 19 Board staff applauds Kern County's efforts to
- 20 increase diversion, address waste management issues on a
- 21 regional basis, and use waste disposal characterization
- 22 data to identify opportunities for additional diversion
- 23 programs.
- 24 Kern County has shared their draft documents with
- 25 us as prepared by their consultant. And those materials

- 1 contain:
- 2 A disposal characterization study that was
- 3 conducted at the landfill;
- 4 Limited data on types of materials diverted
- 5 county-wide;
- 6 A summary of diversion potential and cost
- 7 estimates of potential county-wide programs; and
- 8 Material recovery projections.
- 9 The City of Ridgecrest is in eastern Kern County.
- 10 And the timeline provided by the Board to complete the
- 11 Kern County solid waste planning study for eastern Kern
- 12 County is a March 20th, 2009, working group meeting; a
- 13 March 23rd, 2009, first reading presentation to the city
- 14 council; and in October of 2009 a final presentation to
- 15 the Kern County Solid Waste Management Advisory Committee
- 16 and the county-wide Integrated Waste Management Plan Task
- 17 Force.
- 18 Kern County has informed staff that they will
- 19 need to negotiate with the city to implement any
- 20 additional diversion programs at the landfill.
- 21 Dozens of city residents have implied that the
- 22 Board is forcing or mandating the city to implement
- 23 commercial and residential recycling programs that consist
- 24 of a single bin, in which all waste and recyclables are
- 25 commingled, and all of this commingled material be

Please note: These transcripts are not individually reviewed and approved for accuracy.

37

1 transported to a dirty materials recovery facility more

- 2 than 70 miles away for sorting and processing.
- 3 I would like to clarify, the Board staff have
- 4 never recommended this type of program as a solution to
- 5 complying with the diversion requirements. Board staff
- 6 does not recommend transporting all commingled materials
- 7 more than 70 miles to a dirty MRF.
- 8 The local assistance plan requires the city to
- 9 establish mandatory collection of commercial and
- 10 residential recyclables that would be transported to a
- 11 processing facility.
- 12 The City of Ridgecrest is more than halfway
- 13 through its current 24-month compliance order. And, as I
- 14 said, they have not implemented any major programs. So at
- 15 the city's request, Board staff recommends the existing
- 16 timeline in the compliance order be amended to allow for
- 17 the city to work with Board staff to revise the local
- 18 assistance plan; the city will develop and submit to the
- 19 Board the revised fully executed local assistance plan by
- 20 May 29th, 2009; the city shall submit a new waste
- 21 generation study and apply to the Board for a new more
- 22 accurate base year no later than July 31st, 2009; the city
- 23 will fully implement the programs identified in the local
- 24 assistance plan by January 4th, 2010; and that the Board
- 25 will continue to closely review the city's progress in

- 1 implementing diversion programs during a one-year
- 2 oversight period that commences on January 5th, 2010.
- 3 Now, statute requires the Board to consider the
- 4 following factors when determining penalties: A good
- 5 faith effort, natural disaster, budgetary constraints,
- 6 work stoppages, failure of public agencies to participate,
- 7 alternative program implementation, the diversion rate,
- 8 time extensions or alternative diversion rates, and the
- 9 impacts of construction and demolition waste.
- 10 A good faith effort means all reasonable and
- 11 feasible efforts by the jurisdiction to implement its
- 12 diversion programs or alternative programs or activities
- 13 that achieve the same or similar result.
- 14 Board staff do not believe that the city has made
- 15 a good faith effort to implement the specific terms of the
- 16 compliance order or the elements of the local assistance
- 17 plan, specifically. The diversion data collected by the
- 18 Local Assistance and Market Development staff do not
- 19 demonstrate strong diversion program implementation that
- 20 supports a diversion rate of more than 50 percent.
- 21 The diversion rate data collected does not
- 22 support the city's claim that the 1990 base year is
- 23 accurate and that there is no need for a new base year.
- 24 The material recovery facility feasibility study
- 25 was not completed by the December 2008 due date. And the

- 1 city has requested a time extension to complete that
- 2 study.
- 3 And mandatory residential and commercial
- 4 collection of recyclables will not be achieved by the
- 5 March 31st, 2009 due date.
- 6 The maximum penalty is \$10,000 per day from the
- 7 issuance of the compliance order, which for the City of
- 8 Ridgecrest is September 19th, 2007.
- 9 There are three penalty ranges for the Board to
- 10 consider. They include:
- 11 Serious, which is at least \$5,000 per day up to
- 12 \$10,000 per day for failure to implement without reason or
- 13 justification;
- Moderate, which is at least \$1,000 per day up to
- 15 \$5,000 per day for failure due to mitigating
- 16 circumstances; or
- 17 Minor, which is up to \$1,000 per day for failure
- 18 to meet requirements to some extent.
- 19 In determining the penalties, the Board must
- 20 consider the jurisdiction's budgetary condition and the
- 21 relative impact of the jurisdiction's disposal on the
- 22 statewide waste stream. The Board uses disposal,
- 23 population, and taxable sales data to take these into
- 24 account.
- 25 The percentile for all California jurisdictions

- 1 from the lowest to the highest is determined. Then three
- 2 percentiles are averaged. And the average is the
- 3 mitigating factor.
- 4 The mitigating factor for Ridgecrest is 39
- 5 percent.
- 6 The options for the Board are extensive and are
- 7 included in the agenda item on pages 2 and 3. And to
- 8 summarize, the Board may impose a one-time penalty; impose
- 9 an additional daily penalty if the city fails to fully
- 10 implement the local assistance plan major tasks by the due
- 11 date; impose a penalty and suspend the fine based on
- 12 testimony; impose a penalty and modify the existing
- 13 compliance order completion date to reflect additional
- 14 tasks or diversion programs, or direct board staff to
- 15 develop a revised local assistance plan; number 5 is
- 16 impose no penalty and modify the existing compliance order
- 17 completion date to reflect additional tasks or diversion
- 18 programs and direct Board staff to develop a revised local
- 19 assistance plan; and, 6, modify the existing compliance
- 20 order to include a one-year oversight period after full
- 21 implementation of all existing or additional tasks or
- 22 diversion programs.
- 23 Staff recommends the Board consider Options 1, 2,
- 24 4, and 6. If the Board decides to impose a penalty, Board
- 25 staff recommends the Board use the moderate penalty range

- 1 and apply a 39 percent mitigating factor to the base
- 2 penalty.
- 3 This concludes our presentation. Board staff are
- 4 available to answer any questions.
- 5 BOARD MEMBER MIGDEN: Madam Chair?
- 6 CHAIRPERSON BROWN: Thank you, Frank.
- 7 BOARD MEMBER MIGDEN: I'd like to know the total.
- 8 When you cite a thousand dollars a day, \$500 a day from
- 9 2007, if we were to explore Option A, B, or C, what's the
- 10 total penalty we would be levying?
- 11 CHAIRPERSON BROWN: Actually I'm going to ask --
- 12 our legal counsel has to answer that question.
- 13 BOARD MEMBER MIGDEN: Well, it's an accounting
- 14 question. The X many days times the X dollars. That's
- 15 fine with me. But it seems to me a lot more helpful in a
- 16 presentation if we get the sum, how much are we going to
- 17 ask them for.
- 18 CHAIRPERSON BROWN: Well, that is what the Board
- 19 deliberates on during closed session.
- 20 BOARD MEMBER MIGDEN: I know, ma'am. What I'm
- 21 asking is, if we were to levee the moderate, which is
- 22 suggested, at the defined rate that has been delineated
- 23 what would --
- 24 CHAIRPERSON BROWN: The range, Frank? The
- 25 moderate range is --

- 1 BOARD MEMBER MIGDEN: Or any of them.
- 2 JURISDICTION COMPLIANCE & AUDIT SUPERVISOR
- 3 SIMPSON: Is 1,000 to 5,000 per day.
- 4 CHAIRPERSON BROWN: One to five.
- 5 BOARD MEMBER MIGDEN: So I'm asking the total.
- 6 CHAIRPERSON BROWN: Carole, that is taken into
- 7 consideration during closed session, on the number of days
- 8 that are used, the actual number that's used. We cannot
- 9 give you a specific number right now from the dais.
- 10 BOARD MEMBER MIGDEN: I understand, Madam Chair.
- 11 I'll ask it one more time. And I'm sure this is
- 12 in order. If it were the case that we were pursuing the
- 13 recommendations or the choices, what would the totals be
- 14 according to those determinations? If we were to select a
- 15 thousand since the year of 2007 to this point, how many
- 16 dollars would that be? If we were going the select 5,000,
- 17 how many would it be? I understand. I'm merely wanting
- 18 to know what the total financial burden may be for our
- 19 consideration, because that's really the heart of the
- 20 issue more than specifically from my end the penalty of
- 21 the day.
- 22 CHIEF COUNSEL BLOCK: If I may. Elliot Block
- 23 with the Legal Office.
- 24 As the Chair has mentioned, this is one of the --
- 25 the details of this, there are a number of different

- 1 variables depending on which dates you look at and the
- 2 like. And we're going to have that conversation when we
- 3 go into deliberations.
- 4 However, the very specific question you asked,
- 5 just looking at staff's basic recommendation right now if
- 6 you're using a thousand dollars with the modifier, you
- 7 would be talking somewhere in the range of about 200,000
- 8 or so dollars, if you were looking from the date that the
- 9 notice of hearing was issued until today.
- 10 But there are a number of variables here, both in
- 11 terms of programs that have not been implemented yet and
- 12 still are not implemented yet that the Board can consider.
- 13 And there are about four or five variables, and that's why
- 14 it's a difficult question to answer here. But that's kind
- 15 of the range.
- 16 If you looked at \$10,000 a day to give you sort
- 17 of the outside range, you're literally talking in the
- 18 millions of dollars depending on where you started the
- 19 date. And that's I think why we're a little bit reluctant
- 20 to talk about that. Because what dates you pick and what
- 21 amounts you pick is really dependent on the testimony
- 22 you're going to hear from the city as well.
- 23 BOARD MEMBER MIGDEN: I appreciate that. And,
- 24 Madam Chair, I don't mean to be obstreperous, because I
- 25 appreciate it. It's just for me. It's a more edifying

- 1 presentation if it's not a reiteration of what's in the
- 2 book. I read the book. I know there's six -- if I just
- 3 might say. I know there's six options. So, for me, the
- 4 recitation that repeats what we already know isn't quite
- 5 the same as to say, with these nuances that's a more
- 6 interesting discussion to say, "Well, I'm recommending
- 7 39 percent, and here's why," as opposed to 61. And in
- 8 that, there have been a number of citations made over the
- 9 year including X, Y, and Z. If you were to proceed what a
- 10 thousand dollars a day means to me rather than plucking
- 11 from here or there, it would be here's what makes that
- 12 selection most meaningful for us.
- 13 Again, Madam Chair, we can do it or not. But
- 14 then I'm wondering why I have to ask all that stuff
- 15 private later if we are sitting through a presentation
- 16 here that doesn't offer that up for our consideration.
- 17 CHAIRPERSON BROWN: My only point, Member Migden,
- 18 is that those discussions happen separately because what
- 19 we're hearing from the two sides, both the city and the
- 20 staff, is about the implementation of programs. And our
- 21 deliberations and the decision after those deliberations
- 22 is based on the implementation of programs, not on a
- 23 dollar figure. The dollar figure is part of this --
- 24 BOARD MEMBER MIGDEN: Except it's part of their
- 25 presentation, Madam Chair, and that's what's done. And to

- 1 make that presentation meaningful, rather than repeat
- 2 what's typed in the book, which we've all reviewed, I
- 3 might say might share the professionalism or the nuance of
- 4 what the staff is recommending without tying anyone's
- 5 hands. But that makes me learn something, as I might add.
- 6 And I appreciate what makes 39 versus 40 or what it means
- 7 when there's outright no attempts made. And then we have
- 8 letters from people here.
- 9 That, to me, makes me learn and understand. And
- 10 then I can also apply, "Why do you say moderate instead of
- 11 high?" And if it is moderate, because we've had all these
- 12 other cases, and here's why.
- 13 CHAIRPERSON BROWN: Well, that's an appropriate
- 14 question.
- 15 BOARD MEMBER MIGDEN: Well, I hope that all of
- 16 them were, Madam Chair. I hope all of them were.
- 17 CHAIRPERSON BROWN: Well, no, but what I'm saying
- 18 is if you want to know why staff is recommending a
- 19 moderate range versus the high range, that is a good
- 20 question that Frank should answer at this point, because
- 21 it's part of the staff presentation and I'm sure the rest
- 22 of the Board will benefit from understanding why they're
- 23 recommending the moderate change as opposed to the high
- 24 range.
- JURISDICTION COMPLIANCE & AUDIT SUPERVISOR

- 1 O'SHAUGHNESSY: Madam Chair. Trevor O'Shaughnessy with
- 2 the Jurisdiction Compliance and Audit Section.
- 3 Member Migden, to respond to why the moderate
- 4 range. The moderate range is selected because the city
- 5 has not completely ignored implementation of their
- 6 compliance order. They have been taking efforts. They
- 7 were reporting to us, as was included in the submitted
- 8 information, in their quarterly reports. They were
- 9 advising us, letting us know that they were moving forward
- 10 with elements. They were in discussions with their
- 11 hauler. They've involved the county to integrate
- 12 themselves into a master plan, as was discussed in the
- 13 presentation.
- 14 There's many elements that come together that
- 15 recommend a moderate versus a severe penalty, which would
- 16 be going to the maximum of \$10,000 per day, where if the
- 17 city were just ignoring us and, you know, just said, "We
- 18 don't care what you've done. We're just going to walk
- 19 away." They didn't do that. They have taken some efforts
- 20 and they've moved forward.
- 21 And it also, as you stated, Member Migden, is
- 22 that this also does have consistency measurement, if you
- 23 will, to past issuance of compliance orders for a moderate
- 24 range as well. So the efforts that they have put forward
- 25 are equal to that of jurisdictions in the past.

- 1 CHAIRPERSON BROWN: Sheila has a follow-up
- 2 question.
- 3 BOARD MEMBER KUEHL: Follow-up question would be
- 4 the -- the staff recommendation is also at the low end of
- 5 the moderate scale, as I can see it. And there are five
- 6 options for a beginning date in the penalty for past
- 7 performance. So I would also want to know in deliberating
- 8 whether to begin a penalty -- if I favor one in September
- 9 of '07 when the compliance order was issued, or after the
- 10 local assistance plan was due in February of '08, whether
- 11 there was recalcitrance or failure to comply between
- 12 those -- each of those dates. That would help us also
- 13 decide that they could have taken action earlier but
- 14 didn't and other jurisdictions did. Because we have, you
- 15 know, 500 different jurisdictions in California who are
- 16 mostly in compliance and this one isn't.
- 17 So I'd also want to understand, did they just
- 18 say, "Take your compliance order and stuff it" for a
- 19 couple of months. And that would help me understand
- 20 better, both from them and from you, whether we would want
- 21 to say, "You should be penalized from the time you didn't
- 22 do this because everyone else does it, " or, more fairly,
- 23 not until the local assistance plan was due and they
- 24 failed to submit it or -- et cetera. There's a -- I'm not
- 25 saying you have to tell us what your preference is, but

- 1 simply to describe if there's any difference in compliance
- 2 behavior that would help us decide among those five
- 3 options for past failures. It seems to me it's only in
- 4 this Option 1 that we're looking at past failures.
- 5 Option 2 is about, you know, "If you don't meet
- 6 this stuff in the future," then further penalties. And
- 7 that I think is a different discussion.
- 8 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 9 CHIEF VAN KEKERIX: Lorraine Van Kekerix with the
- 10 Compliance Evaluation and Enforcement Division.
- 11 I'll give you a little bit of background first
- 12 and address the Option 1 versus Option 2. And then I will
- 13 let Trevor talk to you about whether they submitted things
- 14 in a timely manner for your other question.
- 15 In the past, the Board has asked staff to simply
- 16 present the options because they wanted to weigh the
- 17 evidence, both from the jurisdiction that we were having
- 18 the hearing for and the staff, before they made the
- 19 determination. And we were asked not to put a
- 20 recommendation in. And that's --
- 21 BOARD MEMBER KUEHL: I understand that.
- 22 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 23 CHIEF VAN KEKERIX: -- the reason we don't have it in the
- 24 item.
- In terms of Option 1 versus Option 2, in the past

- 1 the Board has applied an additional daily penalty
- 2 sometimes for programs that were already in the compliance
- 3 order and were past the due date. So if something was due
- 4 and was late, the Board members have given the
- 5 jurisdictions an additional penalty for every day it
- 6 continued to be late. They have done similar things with
- 7 upcoming deadlines, such as the March 31st deadline, and
- 8 said if it isn't implemented by this date, then a penalty
- 9 will accrue.
- 10 BOARD MEMBER KUEHL: Let me say I do understand
- 11 the difference between Option 1 and Option 2. Option 1 is
- 12 for past behavior, Option 2 is for future behavior.
- 13 My question really went to Option 1. As the
- 14 Board decides whether or not to impose a penalty, that's
- 15 one thing. If the Board decides that a penalty is
- 16 appropriate for past behavior and we were to take the
- 17 recommendation about the low end of the moderate scale,
- 18 still we would have to take into account based on the
- 19 testimony we will hear from the jurisdiction but this is
- 20 the staff presentation what the behavior was from the
- 21 date the Board issued the compliance order until the local
- 22 assistance plan deadline was missed. And because that
- 23 make a difference in whether we want to extend the fine
- 24 backward all the way to that date.
- 25 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION

- 1 CHIEF VAN KEKERIX: And one more clarification and then
- 2 I'll turn it over to Trevor. The Board staff recommends
- 3 the penalty fall somewhere within the moderate range, not
- 4 at the low end of the moderate range.
- 5 And I'll let Trevor answer the question on --
- 6 BOARD MEMBER KUEHL: Okay. But the moderate
- 7 penalty range, as I read it, is one to five.
- 8 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 9 CHIEF VAN KEKERIX: Right.
- 10 BOARD MEMBER KUEHL: And the Board recommends a
- 11 penalty range from \$390 to \$1950 a day.
- 12 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 13 CHIEF VAN KEKERIX: What that is is applying the
- 14 mitigating factor, since we have to take into account the
- 15 impact of the jurisdiction on the waste stream --
- 16 BOARD MEMBER KUEHL: That's the 39 percent.
- 17 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 18 CHIEF VAN KEKERIX: That's the 39. So 39 times a thousand
- 19 is the 390 --
- 20 BOARD MEMBER KUEHL: Got it.
- 21 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 22 CHIEF VAN KEKERIX: -- and 39 times 5,000 is the 1950.
- BOARD MEMBER KUEHL: Thank you.
- 24 JURISDICTION COMPLIANCE & AUDIT SUPERVISOR
- 25 O'SHAUGHNESSY: Member Kuehl, to address your specific

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

- 1 question. As I'm understanding, you're saying how did
- 2 they progress since the original issuance of the
- 3 compliance order moving forward till today, if we may.
- 4 The city was very cooperative with us all the way
- 5 through and they have maintained cooperation with us.
- 6 They worked with us to develop their local
- 7 assistance plan. We met with them several times. There
- 8 was a cooperative effort to put that together. They
- 9 submitted that plan by its due date, if not earlier. I
- 10 don't have the specific date, but they were on time at a
- 11 minimum. So they met that requirement of submitting their
- 12 local assistance plan in a timely fashion.
- 13 In addition to that, again in the cooperative
- 14 effort, they contacted Board staff and started to move the
- 15 ball forward for developing their new -- or doing the
- 16 waste generation study to develop a new base year. And
- 17 they worked with Board staff. As I understand it from the
- 18 Local Assistance and Market Development staff and if you
- 19 want specifics about the effort that was done in the
- 20 field, staff is available to address that question but
- 21 they did work with staff to develop and gather the data,
- 22 work in the field to move things forward.
- 23 It wasn't until approximately October that the
- 24 communication between the city and ourselves was not as
- 25 strong. They were continuing to submit their quarterly

- 1 reports in a timely fashion. Staff had questions on their
- 2 quarterly reports to get clarification. There was
- 3 response back to that. On November 7th, they submit a
- 4 letter to us that talked about the base year. And in that
- 5 letter, they were justifying a case that they felt a base
- 6 year was not necessary -- a new base year was not
- 7 necessary. And then there was again a lack of
- 8 communication between ourselves and the city with regard
- 9 to direct communication about their letter requesting that
- 10 the base year not be moved forward and that it basically
- 11 be removed from the compliance order.
- 12 And then that brings us up to the January,
- 13 February timeframe where they were noticed for the public
- 14 hearing that was originally scheduled for February.
- 15 Because of our continued communication, we postponed that
- 16 February item until this month.
- 17 And between the posting of the February item and
- 18 the notice for that hearing, there's been significant
- 19 communication to try to understand the compliance order,
- 20 the penalty process, as well as the hearing elements that
- 21 are here.
- 22 BOARD MEMBER KUEHL: But we did hear in the
- 23 report that there had been little movement on some of
- 24 these issues. So I understand cooperating with staff.
- 25 I'm also trying to assess where these failures came from.

- 1 JURISDICTION COMPLIANCE & AUDIT SUPERVISOR
- 2 O'SHAUGHNESSY: And the --
- 3 BOARD MEMBER KUEHL: Because the jurisdiction did
- 4 fail to implement in a timely fashion a number of these
- 5 steps.
- 6 JURISDICTION COMPLIANCE & AUDIT SUPERVISOR
- 7 O'SHAUGHNESSY: So they failed to submit their new base
- 8 year. And that was due specifically on September 30th.
- 9 So beginning in September 30th, when the new base year was
- 10 due, is when, you know, that first timeline, if you will,
- 11 that due date, had been missed. And then we were working
- 12 with them, trying to understand where that status was.
- 13 But that was the first time that things were not
- 14 submitted.
- 15 The new -- from that, the MRF study, they
- 16 submitted documentation with that. But their own study
- 17 was contradictory. We asked for additional information
- 18 for clarification and we didn't get that.
- 19 So how the Board measures their submittal of
- 20 their MRF study -- the material recovery facility study
- 21 that they submitted, if you feel that that was an adequate
- 22 study that they turned in and you determine that they
- 23 complied with that due date, then that would be fine.
- 24 If you determine that what they submitted did not
- 25 meet a study for a material recovery facility, then they

- 1 would have also missed that due date as well.
- I hope that adds clarity.
- 3 BOARD MEMBER KUEHL: Well I think the whole
- 4 notion of good faith effort is really what we try to get
- 5 at in terms of the penalty phase. Because I don't know
- 6 that there's any evidence of a lack of failure here. It's
- 7 simply the question of what mitigating factors the Board
- 8 would take into account in deciding the penalty phase.
- 9 And I think there is an aspect of failure to accomplish
- 10 certain tasks. Then there's the aspect of trying to get
- 11 there.
- 12 You know, I value trying to get there. I don't
- 13 value telling me, "We don't have to do it, because we're
- 14 different from the other 499 jurisdictions." So that's
- 15 what I think we're going to want to also understand.
- 16 Thank you, Madam Chair.
- 17 CHAIRPERSON BROWN: Shall we move -- if we have
- 18 no further questions of staff, we can move to the
- 19 presentation by the City of Ridgecrest.
- 20 And I don't know who's going to --
- 21 CITY OF RIDGECREST MAYOR MORGAN: Madam Chairman,
- 22 I'll begin.
- 23 CHAIRPERSON BROWN: Are you Keith?
- 24 CITY OF RIDGECREST MAYOR MORGAN: No, ma'am. My
- 25 name is Steven Morgan. I'm Mayor of the City of

- 1 Ridgecrest.
- 2 CHAIRPERSON BROWN: Okay.
- 3 BOARD MEMBER KUEHL: Mayor Morgan, could you pull
- 4 the microphone a little closer to you so that those of us
- 5 who are of a certain age can hear you.
- 6 CITY OF RIDGECREST MAYOR MORGAN: I'm terribly
- 7 sorry.
- 8 Madam Chair Brown and members of the Board.
- 9 Again, my name is Steven Morgan. I'm the Mayor of the
- 10 City of Ridgecrest.
- 11 I'm here today on behalf of the Ridgecrest City
- 12 Council, its citizens, and its business community to
- 13 assure the Waste Board that the City of Ridgecrest is
- 14 committed to implementing effective waste management
- 15 diversion programs to comply with the waste diversion
- 16 objectives of the State of California.
- 17 In September, 2007, the City of Ridgecrest did
- 18 enter into a compliance order. Subsequently, in January
- 19 2008 a local assistance plan specifying steps and actions
- 20 was also approved.
- 21 While the City of Ridgecrest has worked
- 22 diligently to comply with the compliance plan and the LAP,
- 23 and has accomplished many of the conditions of the LAP,
- 24 the city has not been able to maintain the schedule
- 25 stipulated in the local assistance plan.

- 1 Today I have with me Mr. Jim McRea, Public
- 2 Services Director with the city. Mr. McRea is responsible
- 3 for planning and building services, of which recycling is
- 4 also a part. Mr. McRea was also involved in the creation
- 5 of the LAP and he is, for all intents and purposes, the
- 6 city's point man on this issue.
- 7 We also have with us today Ms. Nancy Ewert,
- 8 Senior Engineering Manager with the County of Kern Waste
- 9 Management Department, to join us today to represent many
- 10 of the waste management programs and services provided to
- 11 the City of Ridgecrest by the County of Kern.
- 12 Ms. Ewert was worked for the County of Kern Waste
- 13 Management Department for over 18 years and was
- 14 instrumental in the development of the Source Reduction
- 15 and Recycling Element, the waste characterization and
- 16 waste generation studies in the early nineties. Her
- 17 wealth of knowledge has been invaluable to the City of
- 18 Ridgecrest in this manner.
- 19 Finally, the City of Ridgecrest has requested our
- 20 city attorney, Mr. Keith Lemieux of Lemieux and O'Neill,
- 21 to attend today's meeting.
- 22 I would also like to thank Assembly Member Jean
- 23 Fuller, who is in the audience. She has been keeping
- 24 abreast of this situation with us. And we certainly do
- 25 appreciate her concern and her support.

- I would also like to request and I'm not sure
- 2 quite how to do this a format that we can take home with
- 3 us at some point. We would like to put this on our local
- 4 city channel so we can play it over and over for the
- 5 citizens of Ridgecrest, the audio and the video. I'm
- 6 hoping that there is audio -- or video being recorded.
- 7 But if we could get that. If not, I understand.
- 8 CHAIRPERSON BROWN: We have a record -- before
- 9 you go, Mr. Mayor.
- 10 Are we being taped -- video taped, Tracey?
- 11 We have audio tape and we'll have transcripts of
- 12 the public portion of the meeting.
- 13 CITY OF RIDGECREST MAYOR MORGAN: Okay. Thank
- 14 you very much.
- 15 I also would like to take the opportunity, if the
- 16 Chair pleases, at the end of the question and answer
- 17 period, to make a brief closing statement.
- 18 I would now like to ask Ms. Nancy Ewert to
- 19 describe the existing programs and services provided by
- 20 the County of Kern to residents and businesses in the City
- 21 of Ridgecrest. And following Ms. Ewert's presentation,
- 22 Mr. James McRea will describe the process the city has
- 23 made on the conditions of the LAP. Mr. McRea will also
- 24 describe some of the issues which have resulted in
- 25 schedule delays.

- 1 Ms. Ewert.
- 2 CHAIRPERSON BROWN: Press the button.
- 3 MS. EWERT: Good morning, Madam Chairman and
- 4 members of the Board.
- 5 The County of Kern provides many waste management
- 6 services to the City of Ridgecrest. Ridgecrest residents
- 7 pay a land-use fee on their property tax, which pays for
- 8 waste disposal at county landfills, pays for many
- 9 recycling programs, and pays for household hazardous waste
- 10 services. Similarly Ridgecrest businesses pay a gate fee
- 11 at Ridgecrest landfill for disposal and for some recycling
- 12 services.
- The land-use fee and gate fee also pay for a wide
- 14 range of community education and public awareness programs
- 15 provided by the county for the City of Ridgecrest.
- In mid-2008 the city requested advice and
- 17 assistance from the county in order to comply with the
- 18 compliance order and the local assistance plan.
- 19 Unfortunately the county was not involved in the
- 20 original development of the compliance order and the LAP.
- 21 So many of the existing programs and efforts provided by
- 22 the county to the city were not given adequate
- 23 consideration.
- 24 While Ridgecrest is not completely unique, the
- 25 city does have some special challenges. Ridgecrest is

- 1 located in northeastern Kern County and is very, very
- 2 remote. Just to give you a sense, the city's closest
- 3 neighbors include Bishop, 136 miles to the north;
- 4 Tehachapi, 63 miles to the southwest; Lancaster, 86 miles
- 5 to the south; and Trona, 40 miles east. Of these, only
- 6 Tehachapi is within Kern County.
- 7 Additionally the China Lake Naval Weapons Station
- 8 is included within the City of Ridgecrest city limits.
- 9 Eighty percent of the community jobs are at the base and
- 10 75 percent of non-residential waste is generated at the
- 11 base. The City of Ridgecrest has only limited ability to
- 12 influence the waste practices of the China Lake Naval
- 13 Weapons Station.
- 14 In the early nineties the county contracted with
- 15 RMI Consulting to develop a Source Reduction and Recycling
- 16 Element for the county and 11 incorporated cities. RMI
- 17 also conducted waste characterization studies and helped
- 18 each jurisdiction develop their 1990 base-year generation.
- 19 This process revealed that all of Kern County had
- 20 an inordinate amount of construction and demolition waste
- 21 coming into the landfills. In the early nineties both
- 22 businesses and residents paid only a land-use fee. And
- 23 while this fee was very stable, it provided no incentive
- 24 for waste diversion and recycling.
- 25 As a result, the Kern County's first major

- 1 diversion program was to put non-residential waste on a
- 2 gate fee, specifically to drive C&D waste out of the
- 3 landfills and to create business models for businesses to
- 4 provide C&D services and to incentivize businesses to
- 5 reduce their waste streams.
- The gate fee program was immediately successful,
- 7 with disposal in Kern County landfills dropping 30
- 8 percent. Since that time the County of Kern Waste
- 9 Management Department has implemented waste diversion
- 10 programs at Kern County landfills and transfer stations.
- 11 The Ridgecrest landfill currently diverts white goods,
- 12 tires, wood waste, and cardboard. And we are working out
- 13 details with the City of Ridgecrest to expand those
- 14 programs to include scrap metal, green waste, and full
- 15 drop-off facilities.
- 16 Upon request by the city, the County of Kern
- 17 offered to utilize existing planning efforts to help the
- 18 city comply with the LAP requirements to update the waste
- 19 characterization study. In early 2008 the County of Kern
- 20 had completed an RFP for consultant services and had
- 21 contracted with HFH Consultants to oversee and update the
- 22 county's waste characterization study.
- 23 By including the Ridgecrest landfill and
- 24 modifying the sampling procedures, the county was able to
- 25 help the City of Ridgecrest. County staff conducted

- 1 sampling events in October 2008 and January 2009. The
- 2 data has been compiled and is currently available. While
- 3 the county was able to help the city, the scope could not
- 4 be accomplished by the LAP deadline of September 30th,
- 5 2008.
- 6 Finally, the county is assisting the city to
- 7 facilitate discussions with the waste hauler to develop a
- 8 curbside recycling program. As a result, the city has
- 9 received a preliminary proposal from Benz Sanitation for a
- 10 blue cart program. This proposal is a significant
- 11 accomplishment and change. Previously Benz Sanitation had
- 12 only proposed bringing all of the waste stream up to the
- 13 Tehachapi transfer station, which is 73 miles and 2,000
- 14 feet change in elevation. Hauling everything up to
- 15 Tehachapi, processing the waste, and hauling all residuals
- 16 back to Ridgecrest, this just simply was not feasible,
- 17 particularly because there was no transfer station within
- 18 the Ridgecrest area.
- 19 A little bit over a week ago we finally were able
- 20 to sit down, and Ben has proposed doing a blue cart
- 21 program. There are several things that will have to be
- 22 put into place. But the city seems to be more than
- 23 willing to move forward, as does Benz. And we will work
- 24 for a CEQA compliance. And also there will have to be
- 25 some sort of trans-load facility that's developed. But

- 1 the city fully intends to move forward with that.
- Based on the experience working with the city,
- 3 the city is committed to the policies and programs of the
- 4 compliance order and the LAP.
- 5 The county will continue to assist the city to
- 6 expand and implement new recycling programs. The
- 7 requested changes in the schedule will also allow the
- 8 county to help the city in program implementation.
- 9 And I believe Jim McRea now is going to be
- 10 discussing a lot of the programs that have been put in
- 11 place and the things that the city is willing to do.
- 12 Jim.
- MR. McREA: Yes. Good morning, Chairman Brown.
- 14 My name is Jim McRea. Board members.
- 15 What I'd like to do, without trying to be
- 16 redundant, is to try to illustrate the good faith effort
- 17 of the community as well as provide rebuttal
- 18 recommendations and response. We did draft a letter dated
- 19 March 12th that is included within your binder that
- 20 outlines many of these activities and programs.
- 21 The LAP had ten tasks to be in compliance by
- 22 2010. Four of those are under discussion this morning.
- 23 Five of them are in process, on track. And several of
- 24 them exceed expectations of both the city when we began
- 25 and the expectations of the LAMD with respect to

- 1 recommendations for implementation.
- 2 One requires additional attention in detail
- 3 relative to monthly reporting. And, again, with three
- 4 quarterly reports still pending, we indicated that we
- 5 would address that to provide more dialogue.
- 6 Of the items completed to date by the city with
- 7 respect to the good faith effort, we did adopt a mandatory
- 8 solid waste ordinance for residential and commercial
- 9 sectors on March 18th the by the city council. And it
- 10 created the opportunity for source recycling and curbside
- 11 residential pickup. The LAP required the curbside pickup
- 12 but did not specifically require the mandatory aspect.
- 13 And Ridgecrest is the only city in Kern County of 11
- 14 incorporated cities that does not have a mandatory
- 15 curbside pickup. So it is not just a drop of the hat to
- 16 implement. Many of the people moved to the desert to
- 17 avoid government regulations. And there is a due process,
- 18 which we're in the process of following, and that began
- 19 with the mandatory ordinance, which requires every
- 20 residential property owner to subscribe and work within
- 21 the recommendations of the Board.
- The program of services and the fee schedule will
- 23 be adopted by resolution. That's not an ordinance.
- 24 That's working with the hauler and defining the program of
- 25 services and the fee. And we've indicated a willingness

- 1 to put that on the equalized tax roll for uniform
- 2 collection without -- through the community without the
- 3 problem of delinquent accounts or -- because of the nature
- 4 of the base, many people move to Ridgecrest for a two to
- 5 three year cycle because of their military engagement.
- 6 It's intended that we will do a facilities
- 7 feasibility study based on the recent discussions with the
- 8 staff. We did submit an executive summary and, as
- 9 indicated in the staff report, proposed to use a dirty MRF
- 10 to meet your implementation date of March 31st.
- 11 The City of Ridgecrest includes the
- 12 administrative and operational area of the base, not its
- 13 ranges where the actual booms and research takes place.
- 14 Within that administrative area, there are 192 houses that
- 15 Benz currently services; and similar to the proposal that
- 16 was not acceptable to your staff, are currently taking
- 17 192-home waste stream directly to Tehachapi for recycling
- 18 through their dirty MRF. We understand that that's not
- 19 desirable. And we are more than willing to do a
- 20 feasibility study for a facility that would allow a
- 21 transfer station and, with the new mandatory ordinance,
- 22 provide the opportunity for residents to do source
- 23 selection in their home. And now with Benz supportable, a
- 24 blue cart system. And that has been outlined and provided
- 25 to you at again the very 11th hour.

- 1 We did conduct town-hall meeting on January 26th
- 2 to provide an opportunity of community awareness and
- 3 stakeholders within the community to participate in the
- 4 recycling order. You have to understand that Ridgecrest
- 5 has a very high degree of professional scientists, Ph.Ds
- 6 and research people, so they naturally by the nature of
- 7 their disposition are interested in recycling. We
- 8 provided a copy of the PowerPoint for that meeting within
- 9 the response dated March 12th.
- 10 The Public Awareness Program was also included in
- 11 that letter and defined about a dozen new programs that
- 12 the city did immediately begin to implement. Shortly
- 13 after the September compliance issuance, we did engage a
- 14 new employee whose part-time responsibility is that of our
- 15 recycling coordinator; not highly trained in recycling or
- 16 in waste management, but took on that role and began a
- 17 community program almost immediately.
- 18 We've had several new programs, including a
- 19 website that is -- again, we are a very wired community,
- 20 both in coffee shops and Internet connection, and we have
- 21 a website where people can go get information and give the
- 22 status of our recycling programs.
- We did media releases throughout the community.
- 24 We adopted a new city newsletter. We have an Email
- 25 monthly report that focuses on recycling.

- 1 We did telephone recycling bins within city hall.
- 2 When new phone books were issued, residents were given the
- 3 opportunity to bring their old ones to the community and
- 4 recycle them.
- 5 We've done an earth-day event community cleanups
- 6 and outreach programs. The recreation coordinator did an
- 7 educational and support program specifically aimed at
- 8 youth.
- 9 We've established a middle school. It's called a
- 10 Murray Middle School Recycling Girls Club.
- 11 We have a Castle X theme club that recycles
- 12 cartridges. That's one of their major programs.
- 13 We have school visitations and presentation by
- 14 the recycling coordinator.
- 15 We have new E-waste programs that are operational
- 16 within the community, both by DART and private purveyors.
- 17 We have a civic center recycling program where
- 18 all of the offices within the community use a green waste.
- 19 And we engage DART to pick those up and recycle them. And
- 20 we've introduced a procurement policy within the community
- 21 relative to recycling.
- 22 A new community cardboard drop-off and selected
- 23 commercial entity was mentioned in the staff report. That
- 24 is scheduled to be implemented prior to July. The hauler
- 25 has agreed to identify that. And we will pick specific

- 1 selected commercial businesses and encourage them to
- 2 participate in the program.
- 3 Your staff provided about seven recommendations
- 4 for those kind of programs, which we're more than willing
- 5 to implement, and they can monitor those implementations.
- 6 We did, not refuse, but reluctantly not include them
- 7 within a commitment because they would be time specific.
- 8 And as we work through this program, we don't want to be
- 9 back in a situation where we said we could do something by
- 10 a time specific, only not to be able to do that.
- 11 We've also indicated that we will provide
- 12 drop-off centers within the community for voluntary
- 13 recycling given the new ordinance relative to cardboard
- 14 and paper.
- 15 City also offered to create a recycling center
- 16 and drop-off facility at our corporate yards. That was
- 17 preliminarily outlined. It was to be financed through a
- 18 bond issuance of the Community Redevelopment Agency by
- 19 bond defeasance. Unfortunately because of the economic
- 20 downturn, the issuance of those bonds were delayed last
- 21 April. And while that recycling center is a commitment on
- 22 the part of the city at the corporate yards, it has not
- 23 yet been funded in the current cycle.
- 24 We additionally met with county staff and began
- 25 redistribution and highlighting of the various county

- 1 programs that have been offered within the school district
- 2 and public library services.
- 3 We will be included in the new recycling guide of
- 4 the county, and have been working with county staff to
- 5 redo that recycling guide to include opportunities in the
- 6 Ridgecrest area.
- 7 We installed through conservation grants twin
- 8 recycling centers in what we call the Old Town Commercial
- 9 District. At the moment we're not sure that those are
- 10 actually recycled, but they were picked up by the hauler.
- 11 And they provided for both cans, glass, and normal refuse.
- 12 We also put in normal refuse containers, of which I
- 13 believe there are 18 of them within about a four-block
- 14 area.
- 15 And as previously mentioned, there are about
- 16 seven programs recommended by staff that the city is more
- 17 than willing to implement.
- 18 The first and most important step of the city
- 19 that we needed to take was the passing of an ordinance
- 20 that required the mandatory collection. That did take
- 21 some time to develop a new ordinance. It was a
- 22 controversial issue between Ridgecrest residents. The
- 23 mandatory collection is critical to provide both
- 24 enforcement and fee collection to support these new
- 25 recycling programs.

1 On March 18th, the city council adopted that

- 2 ordinance which requires mandatory solid waste collection
- 3 services for both residential and commercial properties,
- 4 and has indicated a program of services will be developed
- 5 by resolution.
- 6 Mandatory collection was not specifically
- 7 identified within the LAP but was a critical step for all
- 8 future recycling programs.
- 9 With respect to task 1, it has been requested,
- 10 both in the letter of November when we had a deadline for
- 11 that study, that the base year requirement of 2006 be
- 12 removed from the LAP. That was a request. And we have
- 13 met with staff on numerous occasions to justify it. And
- 14 to date, staff is not supportive of that request.
- 15 But it is justified by analysis diversion and,
- 16 specifically in our case, we feel a diversion rate that is
- 17 over 50 percent, as well as the new programs and efforts
- 18 required by 1016, which will no longer rely on that base
- 19 year.
- The good faith effort of the city is clearly
- 21 illustrated in the programs that we've undertaken. And
- 22 the apparent problem is in generation data, not diversion
- 23 and recycling.
- 24 Again, the base, as a commercial entity,
- 25 represents a tremendous section of the diversion rate.

- 1 And as indicated by staff report, that 75 percent is the
- 2 area in question, of which the base represents a
- 3 substantial portion of.
- 4 The city is working with the County of Kern, as
- 5 indicated, to update both the characterization study and
- 6 the SRRE with HSF -- I'm sorry -- HFH as the consultant.
- 7 City has requested modifications and extensions of tasks
- 8 4, 5, and 6, but will achieve full compliance by January
- 9 of 2010, as recommended within the staff report.
- 10 Ridgecrest staff will begin a more descriptive
- 11 dialogue within the remaining quarterly reports. I'd like
- 12 to note, however, that at no time has the Waste Board
- 13 staff indicated that our quarterly reports were deficient
- 14 in terms of their regards. And unfortunately due to
- 15 training staff, as indicated by the staff report, there
- 16 was a significant period of time where communications fell
- 17 off 1) because of change of staff and 2) we didn't really
- 18 know who our representatives were within the LAMD.
- 19 A mandatory solid waste residential and
- 20 commercial program that was adopted will assure that the
- 21 goals of the Board and your staff should be met before
- 22 January of 2010.
- 23 The facility study is scheduled, after discussion
- 24 with your staff. And the franchise hauler again has
- 25 offered the blue cart curbside system and is willing to

- 1 immediately begin that with the 200 homes that are located
- 2 within the base that are currently going to a dirty MRF.
- 3 The city would respectfully request consideration
- 4 of the staff report with emphasis on options 5 and 6 for
- 5 the Board's recommended options.
- 6 It is restated that the requirement of a new base
- 7 year is not required but would not specifically benefit
- 8 either the Board or the city. And resources could be much
- 9 better used in the other requested modifications. And,
- 10 therefore, task 1 is recommended by the city to remove
- 11 from the LAP, along with merely the adjustment of the
- 12 scheduling an implementation of the other three items,
- 13 with assurance that the city will attain full compliance
- 14 by January of 2010.
- 15 CITY OF RIDGECREST MAYOR MORGAN: I believe that
- 16 concludes our presentation, Madam Chair.
- 17 CHAIRPERSON BROWN: Thank you, Mr. Mayor.
- 18 And I'd like to acknowledge Assembly Member
- 19 Fuller. And thank you for being here.
- 20 Did you want to make some comments?
- 21 ASSEMBLYWOMAN FULLER: Thank you.
- I would just like to thank the Board. I know you
- 23 have a hard job having the compliance of all the
- 24 communities. But I'm here to let you know that the city
- 25 council members have contacted me and asked me to work

- 1 with them to resolve this problem, that I think they fully
- 2 have been cooperative and want to continue to be
- 3 cooperative. I'm hoping -- they have felt that they have
- 4 worked well with your staff. And so we're hoping that
- 5 some of the low-end recommendations that the staff have
- 6 made would be helpful to them, because ultimately I know
- 7 that you want all of them to be able to attain their goal.
- 8 Their goal is to comply. They're working with the County
- 9 of Kern now as well, which should be a major help. They
- 10 are very isolated. It's over two hours for me to drive
- 11 fairly fast to get there --
- 12 (Laughter.)
- 13 ASSEMBLYWOMAN FULLER: -- and back.
- 14 CHAIRPERSON BROWN: This is on the record
- 15 (Laughter.)
- 16 CHAIRPERSON BROWN: But we can share --
- 17 ASSEMBLYWOMAN FULLER: Thank you.
- 18 BOARD MEMBER LAIRD: But she is the one person in
- 19 the room that funds the highway patrol.
- 20 (Laughter.)
- 21 CHAIRPERSON BROWN: That's true.
- 22 ASSEMBLYWOMAN FULLER: And there is -- you know,
- 23 it is a small community. I think if you note that they --
- 24 with the gift of time and without undue penalties, that
- 25 they could put their resources better to accomplishing

- 1 this goal.
- 2 And Steve Morgan is someone who I know is a local
- 3 community activist there on the council and he is -- he
- 4 works on the base as well, and he leaves no stone
- 5 unturned. So you have the right people at the table
- 6 today.
- 7 Thank you very, very much for your attention.
- 8 And I really appreciate your questions getting at what can
- 9 we do that will help them comply in the future and move
- 10 forward, because they need to accomplish this goal.
- 11 Thank you.
- 12 CHAIRPERSON BROWN: Thank you very much for being
- 13 here.
- 14 That concludes the city's presentation.
- 15 And do we have any questions from any Board
- 16 members?
- John, do you want to start?
- 18 BOARD MEMBER LAIRD: I actually wanted to make a
- 19 comment. And I think it's hard for me in some ways,
- 20 because having spent 23 years in elected office and even
- 21 longer as a staff member in local government, I am not
- 22 used to a process in which you deliberate outside the
- 23 hearing and take the decision outside the hearing. And so
- 24 I wanted to make a comment without prejudicing what might
- 25 happen in that discussion or that decision.

- 1 And I really appreciated Assembly Member Fuller's
- 2 comments, because I think this Board, both as a board and
- 3 as an agency, bends over backwards to work things out with
- 4 local jurisdictions, and only to advances this stage when
- 5 a significant number of milestones haven't been met. And
- 6 that should be acknowledged.
- 7 And I heard the question about whether this was
- 8 going to be broadcast or could be. And I read all the
- 9 communications from individual residents of Ridgecrest.
- 10 And since this might be broadcast, I thought it would be
- 11 important to sort of speak to the global issue and comment
- 12 on some of their communications.
- 13 Because as a local elected official -- and I
- 14 apologize to my colleagues, who have heard this before.
- 15 But I was elected as a city council member in 1981. And
- 16 when that happened, the staff took me aside and said, "You
- 17 know, the life of our landfill is 22 years. And you
- 18 before" -- because we have term limits in Santa Cruz --
- 19 "before you would term limit it off, in two terms will
- 20 quite likely have to begin the process to site a new
- 21 landfill, which will not be pretty."
- 22 And so that was in 1981. We're over 28 years
- 23 later. They said in 1981 you have a 22-year life left in
- 24 the landfill. And because of the efforts of this board or
- 25 this agency, that landfill right now over 28 years later

- 1 has a life of over 30 years left.
- 2 And the key thing underlying that because there
- 3 were a number of communications that said, "We want the
- 4 cheapest thing. We want single cans. That's cheapest."
- 5 -was a failure to look at the long term, that it's much
- 6 cheaper to divert and to not have to pay those new
- 7 landfill costs. And so the question is: Can you join
- 8 with us in the leadership of bringing people along to
- 9 understanding what those global issues are.
- 10 And one of the citizens, Shirley Tate, said, "I'm
- 11 very concerned because one size doesn't fit all." And yet
- 12 that's exactly why we have what seems like a lengthy
- 13 process, is to work individually with each jurisdiction to
- 14 see what actually works for that jurisdiction. Our
- 15 process embodies that ethic of one size doesn't fit all in
- 16 trying to do that.
- 17 And also there was another writer who said, "You
- 18 want to control our city." And the answer is obviously
- 19 not. Because the question is is how does the city wish to
- 20 decide to do the diversion in a way that meets the
- 21 statewide goals and how do we work together in the spirit
- 22 that was offered by Assembly Member Fuller to get there?
- The problem that we have is the law is the law,
- 24 and it sets up a -- or it bottom lines. And we would have
- 25 a tremendous difficulty of going to the hundreds of

- 1 jurisdictions that have complied with the law and have
- 2 lowered their rate and saved money and ended a lot of
- 3 pollution into the atmosphere or the groundwater -- we
- 4 would loose our leverage with them if we said, "The law
- 5 just applies selectively. To those that protest, the law
- 6 doesn't apply to."
- 7 And so the question is, is how are we going to
- 8 genuinely meet deadlines and how are we generally going to
- 9 count accurately? Because the 64 percent -- and there
- 10 were some letters that were very concerned that 64 percent
- 11 was being diverted and what was the issue. If you compare
- 12 to the way all the hundreds of other jurisdictions count
- 13 and the way we enforce it, it doesn't compare. That is
- 14 not an accurate comparison. And so it is how do we in
- 15 good faith meet timeframes and do this, because we've been
- 16 working for years on this. And so I think -- and I
- 17 appreciate and I don't want to ding the Mayor's employer
- 18 in front of the Mayor but I appreciate how difficult it
- 19 is sometimes to work with a jurisdiction that legally
- 20 trumps a local government. And so that is something that
- 21 needs to be worked through and taken into account.
- 22 And I have to comment that there were some
- 23 personal attacks on the staff made in some of the letters.
- 24 And it never ceases to amaze me after over 30 years in
- 25 government, where people will think that being insulting

- 1 is an effective lobbying technique. It is just not. And
- 2 there were letters, such as, "Geez, are you getting
- 3 employee bonuses for this?" and other things. And when
- 4 you have an agency that bends over backwards to try to
- 5 cooperate, that bends the deadlines for as long as you can
- 6 because the real goal is meeting the end result, that's
- 7 neither true nor productive. And I feel obligated to
- 8 speak up for the staff in that.
- 9 So I just thought it was important to make those
- 10 comments, because I think this is an opportunity for
- 11 leadership at the local level to really educate people as
- 12 to how collectively you can change things, and that in the
- 13 long run this is an overwhelming money saver for the
- 14 individuals of Ridgecrest if fully implemented.
- 15 And when people write and say, "We're on fixed
- 16 incomes," well, if you're diverting as other cities are,
- 17 at the same rate, over time the costs are going to go
- 18 down. And that is the cost saver, in addition to it just
- 19 being the law and the right public policy and better for
- 20 the air quality and water quality in the region.
- 21 So I just felt like it was important to offer
- 22 those comments, since, you know, this deliberation will
- 23 happen away and since I think this is going to go back
- 24 to Ridgecrest when you consider things in that context.
- 25 And I just thank everybody for being here today.

- 1 CHAIRPERSON BROWN: Thank you, Member Laird -- or
- 2 John.
- 3 Any other questions from Board members?
- 4 We do go back to the staff for an opportunity for
- 5 some closing comments. And then we will go back to the
- 6 City of Ridgecrest. And then the Board members will have
- 7 another opportunity to ask questions or make any comments
- 8 at that time.
- 9 So, I will go back to the staff. I don't know
- 10 which person is designated.
- 11 Okay. Lorraine.
- 12 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 13 CHIEF VAN KEKERIX: We do have a few comments here.
- 14 The city has asked that we drop the new base
- 15 year, and staff continues to believe that establishing the
- 16 new base year is essential. We have volunteered to
- 17 complete the entire waste generation study for the city to
- 18 submit, and do that within the next several months.
- 19 One of the reasons that we think that it's
- 20 essential is that the impacts of the existing base year
- 21 will continue on into our new measurement system. And
- 22 what it will mean if they have the high generation tonnage
- 23 for the years 2003 through 2006 is their target will be
- 24 higher and therefore they will have to do less programs to
- 25 achieve that target. So the staff does believe the new

- 1 base year is essential.
- We also believe that the programs which they have
- 3 talked about implementing we should incorporate into the
- 4 new revised local assistance plan. And we would propose
- 5 that the schedule that's laid out in the compliance order
- 6 would be where those -- the schedule is laid out as well
- 7 as revising it to include the programs which they brought
- 8 up today.
- 9 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR
- 10 RAUH: Finally, Madam Chair, if I could make one last
- 11 comment.
- 12 I think that --
- 13 CHAIRPERSON BROWN: Please.
- 14 Ted Rauh.
- 15 WASTE COMPLIANCE & MITIGATION PROGRAM DIRECTOR
- 16 RAUH: Yes, this is Ted Rauh. Thank you.
- 17 I think all of the communication with the City of
- 18 Ridgecrest has led to a much improved communication and
- 19 collaboration in these programs, both with the city and
- 20 the county. I think the staff is very confident that with
- 21 the direction from the Board, that we'll be able to work
- 22 very cooperatively with them and achieve both their goals
- 23 and the State goal for diversion in this area.
- 24 So we look forward to doing that regardless of
- 25 your decision today.

- 1 CHAIRPERSON BROWN: Okay. Thank you, Ted. And
- 2 you know who your staff representative is now, Mr. McRea?
- 3 MR. McREA: Yes.
- 4 CHAIRPERSON BROWN: You had mentioned for a long
- 5 time you weren't aware of who they are. But as I'm
- 6 looking through communications log, there doesn't seem to
- 7 be any lack of communication. There's several phone calls
- 8 every month, and it seems to consistently the same person
- 9 throughout. So --
- 10 MR. McREA: Yes.
- 11 CHAIRPERSON BROWN: -- I'm quite perplexed by
- 12 your comment that for a long period of time you didn't
- 13 know who your staff person was. And it seems that
- 14 Whitney's been pretty much on task for quite a while.
- 15 Marshalle joined her. And towards the end we've had the
- 16 addition of Trevor O'Shaughnessy oversees local
- 17 assistance, as well as Lorraine.
- 18 So I just want to ensure that you know who your
- 19 staff representative is.
- 20 MR. McREA: And we began working effectively with
- 21 Jill about, I believe it was, September of '08. But the
- 22 staff did depart in June of '08. And that entire summer
- 23 there was -- I'm sorry but there was no local assistance
- 24 staff.
- 25 CHAIRPERSON BROWN: Well, I beg to differ with

- 1 you. We've had quite a robust local assistance staff.
- 2 But if there was not a communication then, I'd be
- 3 surprised at that, because it shows that there was
- 4 communication throughout the summer of last year. So
- 5 quite a few phone calls.
- 6 But now you're comfortable with --
- 7 MR. McREA: Absolutely.
- 8 CHAIRPERSON BROWN: Okay.
- 9 MR. McREA: And I apologize to Member Laird. You
- 10 know, we did do a substantial outlook program. We've
- 11 tried to alert the community. And an informed elector is
- 12 not an enlightened one.
- 13 CHAIRPERSON BROWN: We do have an opportunity for
- 14 the City of Ridgecrest. I don't know, Nancy, if you or --
- 15 for a last-minute closing statement or questions.
- 16 MS. EWERT: Actually I'd just like to address a
- 17 few things regarding the base year.
- 18 CHAIRPERSON BROWN: Okay.
- 19 MS. EWERT: There have been discussions. And one
- 20 of the premises for the entire compliance order to begin
- 21 with was the fact that the city's reported diversion
- 22 was -- it varied between like 64 percent up into the high
- 23 sixties, 68, 69 percent.
- 24 As you are aware -- and I know that the Waste
- 25 Board does not like delving down into all the numbers.

- 1 However, the PARIS database is populated with data from
- 2 the Department of Finance. And that data is put into the
- 3 PARIS database by Waste Management -- by Waste Board
- 4 staff. It's then incumbent upon the City of Ridgecrest to
- 5 review that data and to either accept it -- and basically
- 6 you hit the "send" button and file the report.
- 7 Unfortunately for quite awhile, the City of
- 8 Ridgecrest really didn't have any trained staff. And as
- 9 long as their numbers were good, they accepted the numbers
- 10 provided by the PARIS report.
- 11 The numbers put into the PARIS report from the
- 12 Department of Finance were county-wide numbers. They were
- 13 not numbers specific to the City of Ridgecrest. And what
- 14 was happening, while everyone else was having this
- 15 economic boom and population was increasing and taxable
- 16 sales were increasing and employment was all increasing,
- 17 that's not what was happening in the City of Ridgecrest.
- 18 In fact, employment took a very significant dip and
- 19 dropped down, population decreased. The only thing that
- 20 stayed in an upward trend was the taxable sales.
- 21 So when you put in specific data for the City of
- 22 Ridgecrest, the City of Ridgecrest is really at about 53
- 23 percent diversion.
- 24 That 53 percent, a lot of that was the direct
- 25 result of the gate fee program that the county

- 1 implemented. But there were other programs. The base had
- 2 a number of recycling programs that they had implemented.
- 3 And the community used those programs for a very long
- 4 period of time. Unfortunately, when 911 hit, the base
- 5 said it was a security issue and they had to close down a
- 6 number of their programs. The city did not replace those
- 7 programs at that time. However, the county did, and has
- 8 worked to have a number of programs at the landfill.
- 9 So while we can't account for every diversion
- 10 percentage, there were major programs that went in place
- 11 that achieved that 53 percent.
- 12 From a consistency point of view, the Waste Board
- 13 staff and the Waste Board have also had compliance orders
- 14 in LAPs with two other cities within Kern County, and they
- 15 were the City of Arvin and the City of McFarland. And in
- 16 neither case were those jurisdictions required to do new
- 17 base years. Clearly there was a lot of programs that
- 18 needed to be implemented and they went forward with that
- 19 implementation.
- 20 And so it is the contention of the City of
- 21 Ridgecrest and the County of Kern, knowing the process
- 22 that we went through in the early nineties, that their
- 23 base year was accurate and did represent what was going on
- 24 at the time.
- To confirm that, as you're aware, the Board of

- 1 Equalization comes in and audits payment of fees. And
- 2 while it's not so critical right now, it was very critical
- 3 in that 1989, 1990 through 1992 process. Because when
- 4 they came down they looked at how Kern County did the base
- 5 year, and they certified and verified and audited that
- 6 base year at that time and concurred that the methodology
- 7 and the procedures were accurate.
- 8 So this is kind of a little bit between staff
- 9 feels a new base year is required, the city and the county
- 10 do not. Other than that we have -- we have put scales in
- 11 at the landfill and our numbers are a little bit more
- 12 accurate. But we had some very good volumetric
- 13 calculations in traffic counts and everything else at our
- 14 landfills during those times and our methodology was very
- 15 logical. We laid it out and it was verified and audited
- 16 by the Board of Equalization.
- 17 So it would be the hope of the City of Ridgecrest
- 18 to move forward to work on implementing programs and not
- 19 to go back and readdress the base year. We believe that
- 20 the base year is reasonably accurate and will actually be
- 21 more accurate than some of the things that could be
- 22 developed today.
- 23 CHAIRPERSON BROWN: I have a question for you,
- 24 Nancy.
- MS. EWERT: Sure.

- 1 CHAIRPERSON BROWN: Can explain the comment that
- 2 you started with, that the Waste Board is not interested
- 3 in delving into the numbers. What do you mean by that?
- 4 MS. EWERT: What I'm meaning is that --
- 5 CHAIRPERSON BROWN: Because I have an issue with
- 6 that.
- 7 MS. EWERT: Okay. And maybe I misstated that a
- 8 little bit.
- 9 What I meant was over this last year, it has been
- 10 very clear that the Waste Board's perspective is that the
- 11 numbers are only an indicator and you are really
- 12 interested in the programs. And that is similar -- the
- 13 City of Ridgecrest wants to move forward with the
- 14 programs. I think it's simply the emphasis. I'm not
- 15 saying you're -- I misspoke. I shouldn't have said you're
- 16 not entirely interested. You are more interested in
- 17 effective programs and that numbers are really only an
- 18 indicator.
- 19 CHAIRPERSON BROWN: Well, I think you've
- 20 stretched it a little bit too much and we need to come
- 21 right back to: The numbers are important from the
- 22 standpoint that they are an indicator. And program
- 23 implementation is actually what we look at. And clearly
- 24 there were not the programs that, it seems, in place to
- 25 support the numbers.

- 1 So the numbers are in important. They're not
- 2 anything other than an indicator in the new waste
- 3 reduction goals that we're putting into place. But
- 4 numbers are important. Staff spends a great deal of time
- 5 with every jurisdiction going through their numbers and
- 6 their program implementation.
- 7 And I believe that -- what I understand is that
- 8 the importance of the base year was the foundation of the
- 9 compliance order.
- 10 And let me ask you also. When did the City of
- 11 Ridgecrest involve the county in the compliance order?
- 12 Because I've heard a couple of different things. Nancy, I
- 13 thought you said middle of last summer you were involved
- 14 and started doing some samplings to help them on their
- 15 waste generation study. I don't see any mention with the
- 16 staff or any of the communication back and forth of your
- 17 involvement until February, with the notification of the
- 18 hearing.
- 19 So was our staff ever notified that you were
- 20 involving the County of Ridgecrest -- or the County of
- 21 Kern?
- MS. EWERT: Just for a little bit of
- 23 clarification. Back in the summer the city started some
- 24 communications with the county. And we looked at, "Okay,
- 25 how can we help you guys?" You know, "how can we take

- 1 some of the efforts we're doing and satisfy some of the
- 2 requirements that your LAP is requiring?"
- 3 CHAIRPERSON BROWN: So was there a communication
- 4 with staff though that you're getting involved and you
- 5 were looking at no longer complying or completing the
- 6 waste generation study and the new base year prior to
- 7 those dates actually expiring?
- 8 MS. EWERT: Yes, there was. And there was
- 9 communication from the city in November -- from the city
- 10 to the State in November.
- 11 CHAIRPERSON BROWN: But that's after those dates
- 12 had passed.
- MS. EWERT: But in your telephone logs there was
- 14 Email conversations between myself, and I believe it was
- 15 Trevor, that laid out that there was some issues going
- 16 forward and some of the things that we were going to be
- 17 doing and some of the efforts that we presented. So there
- 18 was some discussions there.
- 19 It wasn't until actually late 2008, and the
- 20 county specifically requested that the city send a letter
- 21 to the county requesting our support and assistance.
- 22 Before that it was conversations over the phone,
- 23 conversations and Emails and those sorts of discussions.
- 24 CHAIRPERSON BROWN: Okay. I don't see those.
- 25 The other question I have: The compliance order

- 1 was signed by the city and you agreed to do a new base
- 2 year and you agreed to do the waste generation study and
- 3 all of the parts of the compliance order you agreed to?
- 4 MR. McREA: That's correct.
- 5 CHAIRPERSON BROWN: And now you're saying -- and
- 6 with Nancy here, you're now contending that the base year
- 7 is no longer necessary. But you agreed to it when the
- 8 compliance order was issued?
- 9 MR. McREA: That is correct.
- 10 CHAIRPERSON BROWN: Okay.
- 11 CITY OF RIDGECREST MAYOR MORGAN: Madam Chair?
- 12 CHAIRPERSON BROWN: Who asked -- Oh, Mr. Mayor.
- 13 I'm sorry.
- 14 CITY OF RIDGECREST MAYOR MORGAN: Madam Chair.
- 15 Thank you.
- I agree that the City of Ridgecrest has made
- 17 mistakes. I believe mistakes have been made on both
- 18 sides. I don't believe anyone is without blame or fault.
- 19 However, in the last couple of months we have
- 20 worked diligently, very, very hard to unconfuse ourselves,
- 21 if that's -- I know that's not a word, but to get
- 22 ourselves right. I'm a simple person. I simply read
- 23 words. And maybe I don't have full understandings. Under
- 24 the Public Resources Code 40911, Item C, it says the need
- 25 for local agencies to receive assistance from the Board in

- 1 preparing and implementing integrated waste management
- 2 plans and the elements of those plans. And I guess maybe
- 3 in my couple of months as Mayor I misunderstood exactly
- 4 what that meant, and I apologize for that.
- 5 I also was confused when the City of Ridgecrest
- 6 receives a letter from the California Integrated Waste
- 7 Management Board, Resolution 2008-191, congratulating us
- 8 for our successes, dated January 30th, signed by Cara
- 9 Morgan, signed by Mr. Leary -- Mr. Mark Leary. And then a
- 10 day afterwards receiving the Notice of Noncompliance,
- 11 which really got my juices flowing.
- 12 Madam Chair and members of the Board. I do thank
- 13 you very, very much for this opportunity to speak to you.
- 14 The city is committed to the policy of reuse and
- 15 recycling. We are committed and have worked in good faith
- 16 to carry out the LAP. And we have requested some changes
- 17 such as to maintain the 1990 base year and to allow the
- 18 City of Ridgecrest to develop a new schedule that is
- 19 consistent with the information we have put forward. We
- 20 feel that these changes will better enable us to carry out
- 21 the LAP.
- 22 We look forward to continuing to work with your
- 23 staff. And we hope that we can come to a resolution that
- 24 does not over-penalize a city, Ridgecrest, that, much like
- 25 everyone else in the State of California, is having great

- 1 difficulties with their budgets at this time.
- 2 And I just thank you for your time. Thank you.
- 3 CHAIRPERSON BROWN: Mr. Mayor, thank you. And we
- 4 certainly do appreciate you being here. My questions were
- 5 simply to clarify a couple of issues that were on the
- 6 record for the future. But we do appreciate the fact that
- 7 you are here. You are pledging your commitment to getting
- 8 in compliance. And I think the Waste Board is known for
- 9 the fact that we do try and work with jurisdictions. And
- 10 there have been very few -- our goal is compliance and
- 11 having jurisdictions throughout the state comply with what
- 12 the statute says. And our role in that is just to provide
- 13 the local assistance and assist jurisdictions in
- 14 implementing the plan that works for them. Clearly, the
- 15 role is with the local jurisdiction to design the programs
- 16 that best fit your jurisdiction.
- 17 I know Member Mulé had some questions or
- 18 comments.
- 19 And then if anybody...
- 20 Proceed.
- 21 BOARD MEMBER MULÉ: Thank you, Madam Chair.
- I do want to thank all of you for being here
- 23 today. This is not something that we enjoy doing.
- Let me tell you that I've presided over what,
- 25 four or five of these hearings now. And it's never a

- 1 pleasant experience.
- But I do want to go back to something that John
- 3 Laird, our fellow -- my fellow Board member had just said.
- 4 And that is the issue of fairness. And if there's one
- 5 thing that I feel very strongly about is fairness.
- 6 And I will tell you that there are some 500 other
- 7 jurisdictions in this state that have made the effort to
- 8 comply. And I've worked with many of them over the years
- 9 and when I was in the private sector. And I will tell you
- 10 that every jurisdiction is unique. I completely agree
- 11 with your assessment, Mr. McRea. You are unique. Every
- 12 jurisdiction is unique. And so that's why the law had
- 13 allowed for each jurisdiction to design and implement
- 14 their own programs that would help them meet the goals of
- 15 AB 939.
- Now, what perplexes me as we sit here today is
- 17 the fact that here we are, March 24th, 2009, and we're
- 18 sitting here having this discussion, when in fact the
- 19 majority of jurisdictions throughout this state have made
- 20 the efforts to comply with the law. I'm not saying you're
- 21 not making a good faith effort. But it's just frustrating
- 22 to me that we have to sit here in 2009 and have this
- 23 discussion.
- Now, I know that you did sign the compliance
- 25 order. I too have some questions about signing something

- 1 and then saying, "Well, we really didn't" -- "we really
- 2 don't support what we signed" or "we didn't agree to what
- 3 we signed." So those are some issues that we're going to
- 4 have to work out.
- 5 But I really want to just stress that we're here
- 6 to get you -- to help you comply with the law. That's
- 7 what we want to do. And we do have the staff and we do
- 8 have the resources to help you do that.
- 9 And so with the base year issue, the question
- 10 that I have for you is if our staff is willing to provide
- 11 the support, the resources to actually do the base year
- 12 with you, would you be willing to consider keeping that in
- 13 the compliance order?
- 14 MR. McREA: I'm going to get myself in trouble
- 15 here.
- 16 BOARD MEMBER MULÉ: You don't have to -- it's
- 17 just -- you can talk with your attorney.
- 18 CITY OF RIDGECREST MAYOR MORGAN: I've been
- 19 advised -- I'm not very good at this part of it. I've
- 20 been advised --
- BOARD MEMBER MULÉ: Neither am I, Mayor.
- 22 CITY OF RIDGECREST MAYOR MORGAN: I've been
- 23 advised that it is still the City of Ridgecrest's
- 24 contention that the base year is acceptable and accurate.
- 25 But we will be working -- we want to work with your staff

- 1 to make sure that the understanding before the use of that
- 2 base year between your staff and our staff is workable.
- 3 BOARD MEMBER MULÉ: Okay. All right. Thank you.
- 4 And, again, I really do appreciate, all of us
- 5 appreciate your being here today. We know this is quite a
- 6 trip for you to make. We appreciate the fact that you are
- 7 giving this the attention that it is getting. I just --
- 8 again, we just want to get to everybody being in
- 9 compliance with the law, really. It's really that simple.
- 10 So, again, I thank you for being here.
- 11 CHAIRPERSON BROWN: Thank you.
- 12 Sheila.
- BOARD MEMBER KUEHL: I just have two questions to
- 14 the staff based on what the Mayor said. And I also want
- 15 to commiserate with the Mayor. It's not easy. You feel
- 16 like you've been taken to the wood shed. But it's only
- 17 the configuration of the room. I know you probably go
- 18 through the same thing with the council, like we're up
- 19 here and you're down there. But it's not really that way.
- 20 I mean we've kind of all been there too.
- 21 But on the other hand, I feel like a little bit
- 22 of a hard you know what about compliance and about
- 23 penalties really related to other jurisdictions who have
- 24 been asked to comply, haven't quite made it, and have been
- 25 reminded that we must do what's fair in terms of

Please note: These transcripts are not individually reviewed and approved for accuracy.

1 penalizing. There's never been a jurisdiction that said,

- 2 "We've got a whole lot of money. Go ahead and take it."
- 3 So that's really the difficult thing I think for the Board
- 4 at the time.
- 5 So I have two questions to our staff. One really
- 6 goes to the base year. Could you reiterate for me the
- 7 importance of the new base year calculation, as opposed to
- 8 the jurisdiction asking to use the old one.
- 9 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 10 CHIEF VAN KEKERIX: Well, as I was saying a little
- 11 earlier, what staff -- one of the things staff thinks is
- 12 essential is that -- we are moving to a new measurement
- 13 system that will switch to per capita disposal. But that
- 14 will be based on generation amounts for 2003 through 2006.
- 15 If the City of Ridgecrest keeps the high generation amount
- 16 needed to get that high diversion rate, then the amount
- 17 that they have in terms of per capita disposal will be
- 18 higher. We don't see that it's supported by diversion
- 19 programs, the diversion rates. So they will be able to do
- 20 fewer programs to meet the future target than other
- 21 jurisdictions within the State so it's a level playing
- 22 field.
- 23 BOARD MEMBER KUEHL: And my other question goes
- 24 to a comment made by Ms. Ewert about 53 percent, where our
- 25 staff indicated that their best guess was it was somewhere

- 1 in the thirties.
- 2 Can you explain that discrepancy? I mean I
- 3 understand we're right and they're wrong kind of thing.
- 4 But is there a little bit more to it than --
- 5 (Laughter.)
- 6 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 7 CHIEF VAN KEKERIX: Okay. This goes back to the
- 8 adjustment method. We apply the adjustment factors to the
- 9 base year. And when you apply those adjustment factors,
- 10 there are many combinations of those factors, and the city
- 11 has the opportunity to choose which ones it wants or to
- 12 provide documentation on its own diversion factors.
- So we got information from the county. One of
- 14 the factors that was used under Board direction to staff
- 15 could only be used from 2004 on. You couldn't go all the
- 16 way back to 1990 and use it. So the charts that they
- 17 presented about things that were going on over time don't
- 18 comport with what the Board has allowed in the past.
- 19 And the other thing is that one of the other
- 20 diversion rates -- or the other factors used in the
- 21 diversion rate is employment. We have -- the Board has
- 22 consistently said that jurisdiction level employment is
- 23 desirable. But the employment data that we have available
- 24 to us at the jurisdiction level has only been available
- 25 since 2005. So that we couldn't -- we did not have that

- 1 information available back to the beginning. You have to
- 2 take the same factor for the base year and for the report
- 3 year.
- 4 BOARD MEMBER KUEHL: So is it the case that
- 5 between 1999 and 2003 the jurisdiction has not presented
- 6 evidence of their diversion or they have not presented
- 7 evidence, all of which can be taken into the record?
- 8 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 9 CHIEF VAN KEKERIX: Well, we have two issues. The first
- 10 is the calculation method, which I just described. And
- 11 then Cara can speak to what the staff found when they went
- 12 out to do the generation study.
- 13 So in terms of the calculation method, we have
- 14 issues with the method and the documentation that we've
- 15 received to review any new and different factors. But
- 16 then there's also the matter of what staff found on the
- 17 ground.
- 18 LOCAL ASSISTANCE & MARKET DEVELOPMENT DIVISION
- 19 CHIEF MORGAN: Cara Morgan, Local Assistance and Market
- 20 Development Division.
- 21 My team worked with the city over a number of
- 22 months to do really an exhaustive search of any and all
- 23 diversion activities source reduction, recycling, any
- 24 type of composting activities, activities at the landfill
- 25 that could be attributed to the city.

Please note: These transcripts are not individually reviewed and approved for accuracy.

1 Through that, just preliminary we've come up with

- 2 somewhere in the 30 percent range. That's looking at
- 3 everything. They unturned every rock. I think -- you
- 4 know, I think you can see from the communications log that
- 5 my team led my Marshalle Graham really went above and
- 6 beyond in looking for diversion data. Went to the
- 7 military base, got that record.
- 8 To explain the difference is a bit difficult for
- 9 us. To come -- whether it's 53 percent or higher, we just
- 10 cannot find additional diversion that justifies a 50
- 11 percent or greater diversion rate. And, hence, as you see
- 12 in the staff report, why we are still recommending that
- 13 the city move forward with a new base year study as it
- 14 relates to 1016 and going forward with what we feel is a
- 15 more accurate representation of the diversion activities
- 16 that are going on in the city.
- 17 BOARD MEMBER KUEHL: My final question goes to
- 18 the military base issue, because there are -- there's more
- 19 than one military base in the State of California.
- 20 Are any of them within city limits of any other
- 21 cities?
- MR. McREA: No.
- BOARD MEMBER KUEHL: I think so. And so -- well,
- 24 staff is all nodding behind you. But is that correct? I
- 25 mean is there any --

- 1 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 2 CHIEF VAN KEKERIX: There are other cities that have
- 3 military bases within the city boundaries.
- 4 BOARD MEMBER KUEHL: Right. So I'm wondering
- 5 about the issue of, you know, "Well, we can't make them do
- 6 it, and they generate a lot of the waste, " which I think,
- 7 Mr. Mayor, I may have heard from you. And we may agree,
- 8 well, we can't make them do it. But it would be very
- 9 strange to me if this one base's failure to cooperate had
- 10 an impact on the ability of the city to meet their
- 11 diversion requirement. Was that one of the claims or is
- 12 that an aspect of your information?
- 13 MS. EWERT: One of the claims was that the China
- 14 Lake Naval Weapons Station is almost -- not the ranges but
- 15 the offices and most of the work is within the City of
- 16 Ridgecrest.
- 17 And, yes, there are some programs that the base
- 18 is willing to do. And I believe that they are also
- 19 willing to expand their programs.
- 20 What the city is not able to do at this time is
- 21 to pass the C&D ordinances, which then required the base
- 22 to recycle their C&D and do other things. So those
- 23 programs pretty much have to be run at the landfill as the
- 24 waste comes in. And the county is willing to work with
- 25 the city and do some of that recycling.

Please note: These transcripts are not individually reviewed and approved for accuracy.

- 1 There is though some limited ability for them to
- 2 influence what China Lake implements and does.
- BOARD MEMBER MULÉ: Excuse me, Madam Chair. In
- 4 our binders we do have under Tab 5 an Email which
- 5 indicates the diversion of the Naval facility. And so
- 6 I -- you know, they've diverted again. I don't know the
- 7 relative proportion of diversion versus generation, but it
- 8 seems like you're diverting quite a bit at the base. So
- 9 that I would hope is taken into account.
- Thank you.
- 11 BOARD MEMBER KUEHL: Thank you, Madam Chair.
- 12 I just wanted to sort of clarify. Because, as
- 13 you know, we have to make a decision about whether we're
- 14 going to impose a penalty for past behavior, whether we're
- 15 going to impose one for future, et cetera. I'd kind of --
- 16 I'd like to get it as clear as possible. I don't think
- 17 it's only a matter of, you know, good faith. I think it's
- 18 a matter of when the good faith's actually started and --
- 19 because you kind of get your attention often with these
- 20 sorts of hearings.
- 21 Thank you so much.
- 22 CHAIRPERSON BROWN: I have one other follow-up
- 23 question. And I don't know who is the most appropriate
- 24 person to answer it. But within the County of Kern, 11
- 25 jurisdictions, how many of them are relying on their 1990

- 1 base year?
- 2 MS. EWERT: All of them.
- 3 CHAIRPERSON BROWN: All of them.
- 4 Okay. Thank you.
- 5 CITY OF RIDGECREST MAYOR MORGAN: Madam Chair, if
- 6 the Board would like, we can regenerate our city with the
- 7 numbers, the diversion numbers based upon city only, to
- 8 reflect a more accurate diversion in the future for you.
- 9 You know, so we can -- the 70s and the 60 -- 67s and all
- 10 that have been mentioned by your staff, we could
- 11 recalculate all that with the help of Ms. Ewert to try and
- 12 create that more accurate presentation. I understand it
- 13 can't help today, but we're willing to do that.
- 14 CHAIRPERSON BROWN: Actually, the staff
- 15 calculates all of that with the information that you
- 16 provide. I think that they've endeavored to get the most
- 17 accurate information and the most possible information
- 18 available in order to get to where we are. And that's
- 19 actually part of your biennial review.
- 20 So staff can do that.
- 21 LOCAL ASSISTANCE & MARKET DEVELOPMENT DIVISION
- 22 CHIEF MORGAN: Chair Brown, if I may.
- 23 Staff just informed me California City recently
- 24 had a new updated base year study. So that's just quickly
- 25 off the top of their heads.

- 1 CHAIRPERSON BROWN: And at the beginning of the
- 2 presentation, I think Frank's presentation, can you
- 3 reiterate for me -- I got part of it, but you talk really
- 4 fast -- half the jurisdictions in California have redone
- 5 their base year. Can you tell me exactly how many new
- 6 base years have been done?
- 7 JURISDICTION COMPLIANCE & AUDIT SUPERVISOR
- 8 SIMPSON: Yes.
- 9 WASTE COMPLIANCE & MITIGATION PROGRAM DIVISION
- 10 CHIEF VAN KEKERIX: I can do it, Frank.
- 11 It's 277 new base years for 253 jurisdictions,
- 12 because 24 jurisdictions have elected to do two new base
- 13 years.
- 14 CHAIRPERSON BROWN: Okay. Thank you.
- 15 Any other questions or comments from Board
- 16 members?
- 17 Again, I'd like to thank you all for being here
- 18 and for your commitment.
- 19 The Board will go now into closed session and
- 20 deliberate on the penalty phase.
- 21 We will take a picture.
- 22 (Laughter.)
- 23 CHAIRPERSON BROWN: We'll get back to the
- 24 picture. Bonnie's back.
- 25 Elliot, tell me so that we can let the City of

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

- 1 Ridgecrest know how the decision once a decision is made
- 2 is going to be shared with them. Are we coming back? Are
- 3 we going to ask them to stay? Are we going to send it?
- 4 CHIEF COUNSEL BLOCK: Well, it's really up to the
- 5 Board. Typically what we've done is gone into closed
- 6 session and come back and announced in a fairly summary
- 7 way what our decision is and issued the more formal
- 8 decision within a week to two weeks after that.
- 9 CHAIRPERSON BROWN: Okay.
- 10 CHIEF COUNSEL BLOCK: The reason I say it
- 11 probably depends on the Board, in the past we've always --
- 12 the Board has reached a decision that day. In theory, you
- 13 could take more than one day depending on how the
- 14 discussion goes once you get into deliberations.
- 15 But typically we have come back out an hour to
- 16 two later to announce what that decision is. So we could
- 17 do it that way or we could do it another way if you'd
- 18 prefer.
- 19 CHAIRPERSON BROWN: You know what I'd like to do.
- 20 Given the hour, we have to do a photo, we will deliberate
- 21 this afternoon, and given the distance that you've all
- 22 traveled, I will leave it to you. We will issue a
- 23 decision this afternoon. We can share it with you. We
- 24 will just make the announcement probably this afternoon
- 25 but not with all members present, because I don't know

- 1 that we can anticipate that we can do that.
- 2 CHIEF COUNSEL BLOCK: So if for travel purposes
- 3 the city needs to leave, we can commit to communicating
- 4 that decision today as well, whether --
- 5 CHAIRPERSON BROWN: -- today. But we can commit
- 6 to communicating the decision today. I'm not sure, given
- 7 your constraints, and some of the members who have
- 8 obligations this afternoon as early as 2, that we will be
- 9 able to come back into open session and communicate the
- 10 decision.
- 11 So if you would like to stay, we can schedule a
- 12 meeting and I will share the information with you. Or we
- 13 can contact you directly this afternoon.
- 14 We will issue a decision between 2 and 3 o'clock
- 15 this afternoon. If you would like to stay, we will come
- 16 into this room and read the decision. And if at that time
- 17 we haven't come to a conclusion, we will let you know
- 18 that. So between 2 and 3 o'clock this afternoon we will
- 19 come back and deliver a decision.
- 20 CITY OF RIDGECREST MAYOR MORGAN: Madam Chair,
- 21 we'll be here.
- 22 CHAIRPERSON BROWN: Okay. Thank you.
- 23 (Thereupon the meeting recessed
- Into closed session at 12:10 P.M.)
- 25 (Thereupon a lunch break was taken.)

L	AFTERNOON	SESSION

- 2 (Thereupon the meeting reconvened at
- 3 02:03 P.M.)
- 4 CHAIRPERSON BROWN: Good afternoon. For purposes
- 5 of the hearing, we are not -- the Board adjourned from
- 6 closed session. We do not have a quorum in order to issue
- 7 this decision. However, we are issuing it on behalf of
- 8 the Board. And I will read the decision and we will make
- 9 sure to send it out to all the interested parties
- 10 forthwith.
- 11 The Board has determined based on the evidence
- 12 presented in today's hearing that the City of Ridgecrest
- 13 failed to comply with the Board's Compliance Order No.
- 14 IWMA BR07-07, and failed to make a good faith effort to
- 15 implement its Source Reduction and Recycling Element.
- 16 Accordingly, the Board is ordering the following
- 17 penalties and other actions pursuant to Public Resources
- 18 Code Section 41850:
- 19 A) The Board is imposing a one-time penalty in
- 20 the amount of \$47,580 for failure to meet the terms of the
- 21 compliance order, based on a fine in the amount of \$780
- 22 per day beginning from the date of the original penalty
- 23 hearing notice, January 23rd, 2009, through the date of
- 24 today's hearing, March 24th, 2009.
- B) However, in recognition of the city's efforts

- 1 in the last month prior to today's hearing, only \$20,000
- 2 of this penalty shall be due immediately.
- 3 The remaining 27,580 of this fine shall be held
- 4 in abeyance to insure compliance with the remainder of the
- 5 Board's order.
- 6 The Board is further directing staff to work with
- 7 the city to develop a revised local assistance plan that
- 8 shall be agreed to by the city and submitted by May 29th,
- 9 2009. That includes all of the tasks in the existing
- 10 plan, with revised dates, and new tasks the city had
- 11 indicated during the hearing they would add with full
- 12 implementation of all tasks by January 4th of 2010.
- 13 In addition, the revised local assistance plan
- 14 shall include a one-year monitoring period following the
- 15 full implementation of the revised local assistance plan.
- 16 If the city fails to fully implement the revised
- 17 local assistance plan by January 4th of 2010, the \$27,580
- 18 held in abeyance shall be imposed upon the city and the
- 19 city shall be liable to an additional daily penalty in the
- 20 amount of \$1950 per day until the city achieves full
- 21 compliance implementation.
- 22 A formal written decision and body in the above
- 23 shall be served by next week.
- Thank you all very much for being here.
- 25 And if you have any questions, I think those will

Please note: These transcripts are not individually reviewed and approved for accuracy.

1 be directed to our legal counsel. Okay. Thank you. (Thereupon the California Integrated Waste Management Board meeting recessed into closed session and adjourned at 2:06 p.m.)

Please note: These transcripts are not individually reviewed and approved for accuracy.

	107
1	CERTIFICATE OF REPORTER
2	I, JAMES F. PETERS, a Certified Shorthand
3	Reporter of the State of California, and Registered
4	Professional Reporter, do hereby certify:
5	That I am a disinterested person herein; that the
6	foregoing California Integrated Waste Management Board
7	meeting was reported in shorthand by me, James F. Peters,
8	a Certified Shorthand Reporter of the State of California,
9	and thereafter transcribed into typewriting.
10	I further certify that I am not of counsel or
11	attorney for any of the parties to said meeting nor in any
12	way interested in the outcome of said meeting.
13	IN WITNESS WHEREOF, I have hereunto set my hand
14	this 6th day of April, 2009.
15	
16	
17	
18	
19	
20	
21	
22	JAMES F. PETERS, CSR, RPR
23	Certified Shorthand Reporter
24	License No. 10063
25	

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345